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2022 Rule of Law Report
Country Chapter on the rule of law situation in Germany

Accompanying the document

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2022 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

The German justice system continues to experience a very high level of perceived judicial independence and performs overall efficiently. The reinstatement of experience requirements among the selection criteria for presiding judges at the Federal courts has been welcomed by the judiciary. The Government intends to present a new reform to the powers of Ministers of Justice to issue instructions to prosecutors in individual cases after a draft bill by the Federal Ministry of Justice failed to advance in the last legislative period. An extension of the Pact for the Rule of Law to provide further resources for the judiciary has been announced, and the *Länder* have requested the Federal Government to start negotiations on this. However, long-term challenges remain regarding recruitments and the level of salaries of judges. Efforts to improve the digitalisation of the justice system continue and would also be addressed in the new Pact for the Rule of Law.

Germany is still in the process of updating its strategic framework for the prevention of corruption in the federal administration as well as its whistleblower protection rules. However, a number of reforms are planned for the prevention of corruption, including to further enhance transparency in decision making. Among the planned initiatives of the new coalition agreement are the introduction of a legislative footprint on lobbying during the legislative process, and the revision of political party financing rules. Shortcomings remain in the regulation of asset disclosures for parliamentarians and government officials, especially with regard to fragmented and inconsistent post-employment rules and cooling-off periods. Following a significant rise in the detected financial damage caused by corruption in Germany in 2020, with a stark rise of bribery targeting the public sector, Germany has increased criminal sanctions for bribery of members of Parliament. Germany has a very solid record of the prosecution of individuals who commit foreign bribery, but no legal provisions for criminal liability of companies are in place.

Germany continues to enjoy a high level of media freedom and pluralism. There is a high degree of independence of the media and relevant supervisory authorities. This includes a strongly pluralistic framework of national and regional public service broadcasters as well as a well-established Press Council. Transparency of media ownership is ensured. Journalist representatives point to room for improvement regarding the framework for the access to information by journalists, an issue which is also included in the coalition agreement. Länder authorities, the Press Council and other media stakeholders are currently discussing an update of the existing principles of conduct for the media and the police to address the safety of journalists during protests.

As regards checks and balances, plans to improve the transparency and inclusiveness of law-making have been announced, which could address challenges identified by stakeholders in in this respect. Restrictive measures related to the COVID-19 pandemic have continued to be subject to constitutional and judicial review as well as parliamentary scrutiny. The appointment procedure for the head of the Anti-Discrimination Agency, who has remained in functions ad interim for the past four years, has been reformed. Civil society continues to experience challenges due to the uncertainty of rules related to their tax-exempt status. While the Government has announced an intention to reform the legal framework related to the tax exempt status, no concrete proposal has been tabled so far.

RECOMMENDATIONS

It is recommended to Germany to:

- Continue efforts to provide adequate resources for the justice system as part of the new pact of the rule of law, including on the level of salaries for judges, taking into account European standards on resources and remuneration for the justice system.
- Proceed with plans to introduce a 'legislative footprint' to allow for the monitoring and tracing of all interest representatives who seek to influence and contribute to specific legislative texts.
- Strengthen the existing rules on revolving doors by increasing consistency of the different applicable rules, the transparency of authorisations for future employment of high ranking public officials, and the length of cooling-off periods for federal ministers and federal parliamentary state secretaries.
- Take forward the plan to create a legal basis for a right to information of the press as regards federal authorities, taking into account European standards on access to documents.
- Take forward the plan to adapt the tax-exempt status for non-profit organisations with a view to address the challenges which the currently applicable rules present for their operation in practice, taking into account European standards on funding for civil society organisations.

I. JUSTICE SYSTEM

The court system in Germany is structured in a federal manner. Jurisdiction is exercised by federal courts and by the courts of the sixteen federal states ('*Länder*'). The main share of competence and workload regarding the administration of justice lies with the *Länder*[1]. The court structure is divided between the ordinary jurisdiction (civil and criminal) and specialised courts (administrative, finance, labour and social courts). Appointment of judges and prosecutors, except for the Federal Courts and the Prosecutor General at the Federal Court of Justice, falls within the competence of the *Länder*. While appointment procedures differ in details between the *Länder*, all share common core elements, in particular the principle of merit[2] and the judicial review of the process and decisions relating to appointments. For the Federal Courts, a judges' selection committee selects judges for appointment by the executive and Councils of judges of the relevant courts have to be consulted in this process[3]. There are currently 638 local courts, 115 regional courts and 24 higher regional courts, as well as 51 administrative courts and 15 higher administrative courts across the 16 *Länder*[4]. There are five Federal Courts: the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court. Germany has a Federal Constitutional Court and as well as constitutional courts in each of the *Länder*. The prosecution services in Germany are part of the executive, at federal level with the Prosecutor General at the Federal Court of Justice. At the level of the *Länder*, each Land has its own public prosecution service. Germany participates in the European Public Prosecutor's Office (EPPO). There are 27 regional Bars in Germany[5], which are organised under the umbrella of the German Federal Bar.

Independence

The level of perceived judicial independence in Germany continues to be very high among the general public and is now very high among companies. Overall, 76% of the general population and 77% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022[6]. According to data in the 2022 EU Justice Scoreboard, the level remains consistently high for both the general public and companies since 2016. The perceived judicial independence among the general public has decreased in comparison with 2021 (80%), but it remains higher than in 2016 (69%). The perceived

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1 As explained in the 2020 Rule of Law Report, the independence of the German justice systems is ensured by multiple safeguards, which include judicial control over appointments, professional appraisals, promotions, disciplinary sanctions and dismissals, and by a number of elements of judicial self-administration. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 3.

2 The principle of merit is anchored in Article 33 para. 2 of the Basic Law; mainly on the basis of the grades in the two legal state exams.

3 The judges' selection committee is composed in equal parts of the responsible ministers of the federal states and members selected by the Federal Parliament. See Law on Election of Judges and German Law on Judges, Art. 54-55. Similar committees exist in certain *Länder*, though not all of them. Moreover, the process and decision of appointment or non-appointment is fully subject to judicial control before the administrative courts.

4 There are also 18 financial courts, 108 labour courts, 18 higher labour courts, 68 social courts and 14 higher social courts. German Federal Ministry of Justice (2020), Courts at federal level and of the *Länder*.

5 There is also a special bar for the lawyers with rights of audience in civil matters at the Federal Court of Justice.

6 Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

judicial independence among companies has increased in comparison with 2021 (68%) as well as in comparison with 2016 (73%).

The reinstatement of experience requirements among the selection criteria for presiding judges at the Federal Courts has been welcomed by the judiciary. As noted in the 2021 Rule of Law Report[7], the decision by the Minister of Justice in September 2020 to remove the requirement of usually five years of experience at the respective Federal Court[8] from the selection criteria for presiding judges, without involving the Federal Courts and during an on-going recruitment procedure, had been subject to criticism from the judiciary[9]. In February 2022, the new Minister of Justice decided to return to the previous selection criteria, including as regards the specific experience requirement[10], which has been welcomed by stakeholders[11]. This has allowed the Federal Courts to proceed with appointments for presiding judges for a number of vacant posts, which had been frozen in the meantime[12]. As regards the vacancies at the Federal Finance Court that were noted in the 2021 Rule of Law Report[13], a new president was appointed in January 2022[14], following an unsuccessful appeal by another applicant. Furthermore, in the appeal proceedings against the appointment of the vice-president of the Finance Court, a second instance administrative court found that the selection procedure had violated the requirements of Article 33 para 2 of the Basic Law (principle of merit)[15], meaning that the procedure will have to be repeated[16]. More generally, the coalition agreement includes an announcement to reform the appointment and promotion system for judges at the Federal Courts based on the criteria of quality, transparency and diversity[17]. However, no steps have yet been taken. Stakeholders consider that the current system broadly functions well[18].

A new proposal to reform the power of Ministers of Justice to issue instructions to Prosecutors in individual cases has been announced. During the last legislative period, , the reform proposed by the Federal Ministry of Justice to abolish the right to issue instructions to prosecutors in individual cases only in the field of EU and international

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7 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 3-4.

8 Exceptions from the criteria of having five years of experience were already possible.

9 German Judges' Magazine (1/22), Interview with Supreme Court President Bettina Limperg; Contributions from the German Association of Judges for the 2022 Rule of Law Report, p. 10 and the 2021 Rule of Law Report, p. 6.

10 To be noted that in principle under these criteria, exceptions from the five years of experience are possible.

11 Information received from the Association of Judges in the context of the country visit to Germany; Legal Tribune Online (2022), Article on reinstatement of experience requirements at the Federal Courts ('*Wieder fünf Jahre Erfahrung für Führung eines Bundesgerichts').*

12 German Judges' Magazine (3/22), Progress with recruitments at the Federal Courts.

13 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 3-4.

14 German Federal Finance Court (2022), Dr. Hans-Josef Thesling new President of the Finance Court.

15 Judgment of the High Administrative Court of Bavaria of 1 February 2022, 6 CE 21.2708, which confirmed the decision in first instance. The judgment cannot be appealed further.

16 The Court found that the comparison of the applicants' performance on the basis of the appraisals in the service, which the Federal Government had carried out, was legally incorrect. Whether criteria for presiding judges apply to court presidents and vice-presidents remains a point of debate that was not addressed in the court ruling. Stakeholders consider that in particular vice-presidents have primarily judicial responsibilities and should therefore fulfil the experience criteria. The Court states in its judgement of 1 February 2022, 6 CE 21.2708, para. 29 that it is not objectionable if the Ministry of Justice considers the administrative tasks of the vice president to be of greater significance than the judicial tasks. . See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 3-4.

17 Coalition Agreement 2021-2025, p. 106.

18 Information received from the German Judges Association in the context of the country visit to Germany; German Judges' Magazine (1/22), Interview with Supreme Court President Bettina Limperg.

judicial cooperation in criminal matters was not taken forward[19]. The new coalition agreement maintains the intention to adjust the ministerial right to issue individual instructions in view of the requirements set out in the case law of the European Court of Justice[20]. At this stage no further details have been announced, but stakeholders and the *Länder* remain split on the need for such a reform. A number of *Länder* as well as other stakeholders consider that the possibility to issue instructions needs to be maintained to comply with the constitutional principle of democratic legitimacy[21], while other stakeholders argue for its abolition, in view of avoiding any appearance of political influence[22]. The UN Human Rights committee has also recommended to Germany in November 2021 to consider legislative reforms to effectively ensure the independence of the prosecution service[23]. According to Council of Europe recommendations, where the Government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law[24].

Measures and reflections to introduce regular security checks for judges before their appointment are underway in certain *Länder*. In most *Länder*, the National Security Agencies only perform security checks of the records of a specific candidate for judicial appointment upon explicit request of the appointing authority[25]. In Bavaria, since 2016, all candidates are subject to a standard request to the security agency to check its records, but only with the consent of the candidate[26] and the applicant has the right to react to any potential concerns raised in the context of this check. In May 2021, Mecklenburg-Vorpommern introduced a system of systematic security checks of all candidate judges by the National Security Agency[27]. Candidate judges have to be informed about the procedure[28] and have the right to request a review in front of an administrative court[29]. In Bremen and Niedersachsen, reflections are currently on-going to introduce a system of more systematic security checks[30]. The aim behind such reforms would be to identify whether candidate

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19 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 3.

20 The coalition agreement further notes that issuing a European Arrest Warrant requires a decision by a judge. Coalition Agreement 2021-2025, p. 106. To be noted that the relevant case law of the European Court of Justice on concerns the definition of the term 'judicial authority' in the context of the application of the European Arrest Warrant. Judgments of the Court of Justice of the European Union of 27 May 2019, *OG and PI*, Joined Cases C-508/18 and C-82/19 PPU and of 24 November 2020 – C-510/19, ECLI:EU:C:2019:456.

21 Joint letter by Hessen, Bayern, Brandenburg, Nordrhein-Westfalen, Mecklenburg-Vorpommern, Saarland, Niedersachsen and Schleswig-Holstein of 3 February 2021 and information received from the EU Affairs Committee of the Justice Ministers Conference in the context of the country visit to Germany. See also contribution from the German Bar Association for the 2021 Rule of Law Report, p. 7.

22 Contribution from the German Association of Judges for the 2021 Rule of Law Report, p. 7; Position Paper by the New Judges' Association on the draft law on instructions to prosecutors from 2021.

23 Contribution from UN Human Rights Regional Office for Europe for the 2022 Rule of Law Report – Germany; OCHCR (2021), International Covenant on Civil and Political Rights – Concluding observations on the seventh periodic review of Germany, para. 41.

24 Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 13 (d-e). As noted in the 2020 Rule of Law Report, the fact that this right is rarely used in practice, combined with the legal safeguards in place, appears to mitigate the risk of misuse of the right of instruction; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 3.

25 Figure 56, 2022 EU Justice Scoreboard.

26 Communication on the duty of constitutional loyalty in the public service of the Bavarian State Government.

27 Figure 56, 2022 EU Justice Scoreboard. State Judges Law Mecklenburg-Vorpommern, §3a.

28 State Civil Servant Law Mecklenburg-Vorpommern, §12a.

29 As part of the general possibility for judicial review of the entire appointment procedure; see also FN 3.

30 Information received from the EU Committee of the Conference of Justice Ministers in the context of the country visit to Germany.

judges respect the principle of constitutional loyalty[31]. According to European standards[32], when security/integrity checks are not carried out by self-governing bodies of the judiciary themselves but by an external body, utmost consideration must be given to respecting the principles of separation of powers and checks and balances[33].

Quality

The Pact for the Rule of Law will be extended to provide further resources for the judiciary, but long-term challenges regarding to recruitment and salaries of judges remain. Following a request by the *Länder* reiterated in November 2021[34] and repeated demands by stakeholders[35] already noted in the 2021 Rule of Law Report[36], the new coalition agreement of the Federal Government includes a commitment to continue the 2019 'Pact for the Rule of Law'[37]. On 2 June 2022, the *Länder* formally requested the Federal Government to start negotiations for the new Pact for the Rule of Law[38], which were then started on 9 June 2022[39]. The implementation of the original pact has continued, with over 2700 posts for judges and prosecutors having been created by June 2021[40], already over-fulfilling the commitment of creating 2000 new posts by the end of 2021. A final report from the *Länder* on the implementation of the pact will be presented in 2022[41]. While recognising the progress made so far, representatives of judicial associations consider that due to new tasks for the judiciary, around 1500 to 2000 additional posts for judges and prosecutors would be necessary[42] and that additional investments are also needed for creating posts for court staff[43], requesting a strong involvement of all judicial stakeholders, including also lawyers[44], in the preparation of the new pact for the rule of law. In addition, longer-term challenges persist, in

[31] According to §9 of the German Law on Judges, judges have to the guarantee that they will always stand up for the free democratic basic order within the meaning of the Basic Law. Discussions about the return of a politician who had expressed right-wing extremist views during his mandate to his former position of judge have recently highlighted the question of constitutional loyalty. See the statement of the German Judges' Association (2022): Make use of all legal options in case of Meier.

[32] Venice Commission opinion (CDL-AD(2021)046), para. 16.

[33] While there may be a legitimate interest, especially for certain specific judicial posts, to conduct a verification of security, this should be done in full respect for judicial independence. Venice Commission opinion (CDL(2022)005), para. 14.

[34] Conference of the Justice Ministers (2021), Pact for the Rule of Law. As noted in the 2021 Rule of Law Report, the *Länder* had already requested the continuation of the pact in June 2021; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 5.

[35] Contributions from the German Association of Judges, the German Federal Bar and the German Bar Association for the 2022 Rule of Law Report.

[36] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 4-5.

[37] Coalition Agreement 2021-2025, p. 105.

[38] Conference of the Justice Ministers (2022), Pact for the Rule of Law – Pact for the Strengthening of Justice. See also, Bavarian Ministry of Justice, Press statement of 2 June 2022 on the Conference of Justice Ministers.

[39] To be noted that the federal structure of the German judiciary allows funding of the courts operated under the responsibility of the Länder only within narrow limits set by the Basic Law.

[40] As of June 2021, around 2 500 of these posts had been filled. In addition, over 3800 posts for other judicial staff had been created of which around 2 500 had been filled. Input from Germany for the 2022 Rule of Law Report, p. 7.

[41] Input from Germany for the 2022 Rule of Law Report, p. 7.

[42] Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 15; Contribution from the German Association of Judges for the 2022 Rule of Law Report, p. 12.

[43] Contribution from the German Federal Bar for the 2022 Rule of Law Report, p. 13.

[44] Contribution from the German Bar Association for the 2022 Rule of Law Report, p. 12.

view of an upcoming 'wave' of retirements of judges[45]. In this context, concerns continue to be raised regarding the overall attractiveness of the profession, with stakeholders pointing both to the overall level of salaries as well as regional disparities in this respect as a challenge[46]. A study of the German Association of Judges[47] published in January 2022 shows that such disparities can amount up to a 13% difference in salary for entry-level positions between the *Länder*[48].

Efforts to improve the digitalisation of the justice system continue, and should also be covered in the framework of the expanded Pact for the Rule of Law. The new Federal Government coalition has announced that the existing 'Pact for the Rule of Law'[49] will be expanded to encompass also a 'Digital Pact for the Judiciary'[50]. Comprehensive procedural rules for the use of digital tools are in place in Germany for civil, criminal and administrative proceedings[51]. Electronic communication tools for courts and prosecution services are fully implemented[52]. Digital solutions to initiate and follow proceedings in civil and administrative cases are overall very good[53]. However, gaps still exist for criminal cases, for example on defendants' ability to communicate confidentially with their lawyer during remote hearings[54]. As noted in the 2020 and 2021 Rule of Law Reports, courts and public prosecutors will be obliged to keep court and procedural files exclusively as electronic files by 1 January 2026[55] and three projects at *Länder* level are ongoing towards that transition[56]. While the stakeholders are broadly in favour of the digitalisation of the judiciary under the expanded Pact for the Rule of Law, they pointed out that greater efforts are needed to ensure the consistent, effective and practical use of digital tools across the country, which can vary among individual courts and *Länder*[57]. Building on the experiences of using the existing civil

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45 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 5.

46 Contribution from the German Association of Judges for the 2022 Rule of Law Report, p. 11.

47 German Association of Judges (2022), Gap in entry level salaries remains wide.

48 According to European standards, judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 54. See also Recommendation CM/Rec(2010)12, para. 33.

49 2020 Rule of Law Report, Country Chapter on the rule of law situation in Germany.

50 Coalition Agreement 2012-2025, p. 105.

51 Figure 42, 2022 EU Justice Scoreboard.

52 Figures 43-44, 2022 EU Justice Scoreboard.

53 Figures 46-47, 2022 EU Justice Scoreboard.

54 Figures 46-47, 2022 EU Justice Scoreboard.

55 2020 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 4 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 5.

56 The *Länder* are engaging in three large-scale projects to implement the full digitalisation of court files (namely, eAS (4 *Länder*), eIP (6 *Länder*) and e2A (6 *Länder*)), which has involved the progressive introduction of the electronic filing in courts for pilot and regular use. As the sorting and filing of documents in an electronic file is more time-consuming than with a paper file, particularly due to the need to capture metadata, name or categorise documents, the SMART project was launched in the Rhineland-Palatinate, which aims to automate these processes with the support of artificial intelligence; a pilot project in a court is being prepared. Input from Germany for the 2022 Rule of Law Report, p. 10 and information received. EU Affairs Committee of the Justice Ministers Conference in the context of the country visit to Germany.

57 The German Federal Bar highlighted among other the need for better technical equipment and infrastructure, the consistent implementation and further development of electronic legal transactions. Contribution from the German Federal Bar for the 2022 Rule of Law Report, p. 14. The German Association of Judges considers further investment efforts will be needed to ensure a transition to a fully digitized justice system by January 2026 (i.e. target date for the use of electronic file). Contribution by the German Association of Judges to the 2022 Rule of Law Report, p. 12 and German Association of Judges (2021), After the Pact is

procedural rules for digital hearings[58], in November 2021 the Conference of Justice Ministers asked the Federal Government to modernise the rules for hearings in the civil procedural code[59]. The Federal Ministry of Justice is presently working on a draft proposal[60].

Steps to provide for specialised court chambers for commercial matters with the possibility to conduct proceedings in English are continuing. Following a legislative proposal tabled by the Federal Council (*Bundesrat*) as noted in the 2021 Rule of Law Report[61], the coalition agreement has taken up a commitment to provide for specialised chambers for international commercial and economic disputes that may conduct proceedings in English[62]. The proposal had lapsed with the end of the legislative period, but has been reintroduced by the Bundesrat to the Bundestag in March 2022[63]. In the meantime, in Berlin a new chamber for international commercial and competition disputes has been created in 2021[64]. Other projects aimed at improving court specialisation related to large-scale international proceedings include 'Quality Law NRW', which provides for the centralisation of certain type of disputes at specific upper regional courts, for example cases related to mergers and acquisitions above a value of EUR 500 000 at the upper regional court of Düsseldorf[65]. The aim is to centralise expertise in complex and fast-evolving areas of law and thereby to ensure efficient and high-quality adjudication.

Efficiency

The justice system overall continued to perform efficiently, even if the 'mass' civil court cases[66] are posing a challenge. While the disposition time has increased for administrative cases in 2020 (from 397 days in 2019 to 426 days in 2020), their high clearance rate has remained relatively stable (at 109% in 2019 and at 110% in 2020) and confirmed the positive trend on efficiency in administrative cases[67]. The number of pending administrative cases has slightly decreased in 2020, yet remains relatively high at 0.9 cases per 100 inhabitants[68]. At the same time, in 2021, a significant increase of cases in relation to challenges on restrictions related to the COVID-19 pandemic was observed in the administrative courts compared to 2020, which may take time to process also throughout 2022[69]. The performance indicators on

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before the Pact. The German Bar Association pointed out that as of January 2022 lawyers, public authorities or legal persons under public law are obliged to submit briefs to the courts only electronically, whereas the same obligation on electronic communication does not apply to the courts. Contribution by the German Bar Association to the 2022 Rule of Law Report, p. 13.

58 Article 128a of the German Code of Civil Procedure.

59 Conference of the Justice Ministers (2021), Further development of video hearings in court proceedings.

60 Information received from the Federal Ministry of Justice in the context of the country visit to Germany.

61 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 6.

62 Coalition Agreement 2021-2025, p. 106.

63 Bundesrat (2021), Draft Law on strengthening courts in economic disputes.

64 District Court Berlin (2021), International chambers in the District Court Berlin. Similar chambers already exist in Baden-Württemberg, Hessen, Nordrhein-Westfalen, Saarland and Hamburg.

65 In addition, cases related to information and media technology and to renewable energy above EUR 100 000 are centralised at the courts of Cologne and of Essen and Bielefeld, respectively. Decree on jurisdiction for disputes from the areas corporate transactions (mergers & acquisitions), information technology and media technology as well as renewable energies.

66 This normally relates to a very high number of individual civil claims that tend to have the same or very similar factual characteristics.

67 Figures 5, 9 and 13, 2022 EU Justice Scoreboard.

68 Figure 16, 2022 EU Justice Scoreboard.

69 For example, in the North-Rhine Westphalian administrative courts, with a jurisdiction for about a quarter of the national population, the challenges against the COVID-19 restrictions at first instance in 2021 amounted

civil and commercial litigious cases have remained stable (with the clearance slightly decreasing from 98.8% in 2019 to 98.1% in 2020)[70]. As highlighted by stakeholders[71], the phenomenon of 'mass' civil court cases, such as cases related to the so-called *Dieselgate* scandal[72] present serious challenges for judges to ensure handling of cases within adequate timeframes[73]. This issue has also been recognised as urgent by the Conference of Justice Ministers in November 2021 and June 2022, which have asked the Federal Government to examine the possibility of legislative amendments to enable the efficient handling of mass civil court proceedings[74].

II. ANTI-CORRUPTION FRAMEWORK

Germany has several authorities responsible for the prevention of corruption at the federal level, including the Federal Ministry of the Interior, Building and Community and the Supreme Audit Institution. Competences for the policy coordination and corruption prevention in the 16 Ministries of the Interior at the *Länder* level depend on the anti-corruption frameworks in place. The Federal Court of Auditors[75] and the Courts of Auditors at the *Länder* level have a preventive role in monitoring the public spending, including controls of corruption. As to the repression of corruption, Germany has a decentralised approach. The sixteen *Länder* are in charge of the investigation and prosecution of corruption offences across Germany. Some *Länder* have specialised police and prosecution offices on corruption in place. The Federal Criminal Police Office plays a role in the information-exchange between the international level and the local level as well as among police offices at the *Länder* level.

The perception among experts and business executives is that the level of corruption in the public sector remains low. In the 2021 Corruption Perceptions Index by Transparency International, Germany scores 80/100 and ranks 5th in the European Union and 10th globally[76]. This perception has been relatively stable over the past five years[77]. The 2022

to 10 442 cases (both main and interim measures cases) with 1 903 cases having been decided. By comparison, in 2020, 1 473 cases were received. The proportion of these cases in all new disputes at the North-Rhine Westphalian administrative courts thus increased from about 3% in 2020 to 20% in 2021. Higher Administrative Court of North-Rhine Westphalia (2022), Annual Report, pp. 3 and 12.

70 Figure 12, 2022 EU Justice Scoreboard.

71 German Judges' Magazine (12/21), p. 438 and (03/22), p. 102, and information received from the German Association of Judges in the context of the country visit to Germany.

72 According to the Judges Association, the number of cases related to the so-called *Dieselgate* scandal at Higher Regional Courts in 2021 increased by 25% to about 37 500 cases. German Judges' Magazine, (03/22), p. 102.

73 Contribution from the European Association of Judges for the 2022 Rule of Law Report, pp. 21-22; Contribution from the German Association of Judges for the 2022 Rule of Law Report, p. 10.

74 The Conference of Justice Ministers suggested that the legislative amendments could touch upon on civil law, civil procedural law, professional and legal services laws as well as on court fees and costs. Conference of the Justice Ministers (2021), Urgent need for reform to deal with mass procedures.

75 There is also a role for the Federal Court of Auditors to assess the implementation of the Federal Government Corruption Prevention Directive. It can provide recommendations for corruption risks and for corruption prevention.

76 Transparency International (2022), Corruption Perceptions Index 2021. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

77 In 2017, the score was 81, while, in 2021, the score is 80. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points), and is relatively stable (changes from 1-3 points) in the last five years.

Special Eurobarometer on Corruption shows that 53% of respondents consider corruption widespread in their country (EU average 68%) and 8% of respondents feel personally affected by corruption in their daily lives (EU average 24%)[78]. As regards businesses, 44% of companies consider that corruption is widespread (EU average 63%) and 17% consider that that corruption is a problem when doing business (EU average 34%)[79]. Furthermore, 34% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)[80], while 35% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)[81].

Germany's strategic anti-corruption framework at the federal level continues to be implemented and is under review[82]. The 'Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration' sets out key elements of the federal administration's corruption prevention strategy applying to all categories of federal employees, authorities and offices, including the supreme federal authorities, the military and state-owned enterprises[83]. The revision of the directive led by the Ministry of Interior is expected to be finalised by the end of 2022[84]. Germany has been encouraged during the UNCAC review to seek, where appropriate, input from stakeholders outside the public sector[85]. Similarly, the currently ongoing revision of the 2004 rules on the prohibition to accept favours and gifts, with an aim to assess whether more up-to-date and harmonised rules and increased legal certainty would be required, takes longer than initially planned and is expected to be finalised in 2023[86]. The delayed comprehensive 2020 compilation report on integrity in the federal public administration planned for 2021, was finally published in spring 2022, including, among others, specific data on corruption cases and suspicion of corruption in the federal public administration[87].

The Government envisages further strengthening the legal framework for corruption. Corruption is already broadly criminalised in Germany[88]. Following the introduction of

[78] Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

[79] Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

[80] Special Eurobarometer 523 on Corruption (2022).

[81] Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

[82] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 7.

[83] UNCAC Review Report of Germany for the Review Cycle 2016-2021 (2020), pp. 29, 31-32. The strategy is limited to the federal level and, thematically, to the prevention of corruption. In general, stakeholders consider the system in place for the monitoring of the implementation of the directive to be comprehensive and well-functioning, information received from LobbyControl in the context of the country visit to Germany.

[84] Information received from the Ministry of Interior in the context of the country visit to Germany. An inter-ministerial working group, which includes contact persons for corruption prevention and experts from the internal audit units prepares the revision, submitting it to all federal ministries for approval and to the Federal Cabinet for adoption.

[85] United Nations Convention against Corruption Country Review Report of Germany for the Review Cycle 2016-2021 (2020), p. 30.

[86] Information received from the Ministry of Interior in the context of the country visit to Germany. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 7.

[87] Ministry of Interior (2021), Integrity in the public administration – Annual Report 2020.

[88] Corruption is comprehensively criminalised in Germany, including active and passive bribery (see sections 331-337 of the Criminal Code). Private sector bribery is further criminalised in sections 299-300 of the Criminal Code, while bribery of members of Parliament is specifically criminalised in section 108e of the

increased sanction levels that entered into force in October 2021, the new coalition agreement includes, in addition, reform plans to make the criminal offence for bribery involving members of the Parliament more effective[89]. There is also a new initiative foreseen in the new coalition agreement to revise current corporate sanctions, after the failure of the initiative from the Ministry of Justice to introduce a Corporate Sanction Law[90] in June 2021[91]. A statute for corporate criminal liability[92] could further facilitate Germany's leading role among OECD countries in criminal prosecutions of foreign bribery[93]. A new law also came into force amending the existing transparency register now requiring all legal entities to register information on beneficial ownership in companies[94].

The financial damage caused by corruption has seen a significant rise in 2020[95]. The federal police publishes on an annual basis a robust analytical National Situation Report illustrating Germany's efforts to repress corruption. The report could be further improved by including information broken down by Germany's 16 *Länder*[96]. The latest 2021 official Federal Police Report details 5 510 police-registered corruption cases in 2020[97]. This represents a minor increase in numbers of cases by 1.5% compared to 2019[98]. The Report also indicates a decrease of 14.5% in the number of suspects. However, the number of bribery

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Criminal Code. Germany has specific provisions for bribery of foreign officials in place (section 335a Criminal Code; Article 1 (2) (4) Act on Combating International Bribery).

89 Section 108(e) of the Criminal Code. Active and passive bribery involving a member of the Parliament is since October 2021 a crime carrying a minimum sanction of one year of imprisonment and a maximum sentence of ten years of imprisonment (in minor cases, six month to five years). Due to the upgrading to a crime, attempted bribery involving a member of the Parliament is now also punishable. As it stands, in addition to imposing a sentence to imprisonment for taking or offering a bribe in one's capacity as member of Parliament, a court may deprive a person of their ability to acquire rights from public elections and the right to be elected or vote in public matters.

90 Law on the sanctioning of association-related crimes.

91 After one ministerial draft submitted, one government bill and several debates about the planned provisions, the legislative plan had been dropped after more than three years due to the lack of support by the conservative coalition partner particularly regarding the planned handling of internal investigations. The previous 2020 draft bill and the contributions to the related public consultation are publicly available on the website of the Federal Ministry of Justice (2020), Business Integrity Strengthening Act.

92 Companies can be held liable for corruption offenses committed by their representatives under the more generic Act on Regulatory Offences with a fine of up to EUR 10 Million and the possibility to confiscate profits, which represents an administrative corporate liability regime. According to the OECD (2021), Working Group on Bribery, Implementing the OECD Anti-Bribery Convention, Phase 4 - Two Year Follow-Up Report Germany, p. 4, the lack of enforcement against legal persons has indeed demonstrated the limits of Germany's administrative liability regime.

93 OECD (2021), Working Group on Bribery, Implementing the OECD Anti-Bribery Convention, Phase 4 - Two Year Follow-Up Report Germany, noting, however, that enforcement primarily targets natural persons who commit economic offences, while Germany's corporate liability regime remains critically low. See also Correctiv (2022), Export champion Germany – the corruption file, indicating the defence sector as high-risk corruption sector.

94 Previously, companies did not have to register in the transparency register if the information on the beneficial owner was derived from other registers. Transparency Register and Financial Information Act. For the implementation, there is a transition period until 1 December 2022.

95 German Federal Criminal Police Office (2021), Federal overview on corruption 2020.

96 The report is based on information supplied by the Federal Criminal Police Office and its counterparts in the federal states, the Federal Police and the Customs Criminological Office using a nationally standardised questionnaire and published every January for the previous year.

97 German Federal Criminal Police Office (2021), Federal overview on corruption 2020.

98 As such, the number of police-registered corruption crimes is just slightly above the average of the past five years.

cases have starkly increased[99]. Cash payments are the most widely used form of corruption. At the same time, the value of undue advantages obtained through bribery also significantly increased[100]. Overall, the detected financial damage caused by corruption has notably increased compared to the previous year (2019) by 72.3% amounting to EUR 81.2 million in 2020. Of those who accepted a bribe, 71% have been public officials, which represents an increase by 4%, compared to the previous year. The services sector is the most affected, while the public administration represents the preferred target[101]. Thus, compared to the previous year, overall the detected financial damage caused by corruption has notably increased in Germany in 2020[102], with a stark rise of bribery targeting the public sector.

The mandatory lobby register and a lobbying code of conduct entered into force and the coalition agreement aims at further increasing lobbying transparency. Germany's mandatory lobby register[103], administered by the Federal Parliament (*Bundestag*) and applicable to the Federal Parliament, the Federal Government and ministries, including heads of directorates and above, came into force in January 2022[104]. The new Government plans to widen its scope to register a larger group of interest representatives[105] and to also record lower level meetings at technical levels in the ministries where legislative drafts originate from[106]. The register is accompanied by a lobbying code of conduct[107]. An initial suggestion from stakeholders to establish an independent oversight body was not implemented[108] with the result that the administration of the Federal Parliament will rely on third parties'

[99] German Federal Criminal Police Office (2021), Federal overview on corruption 2020. This includes active bribery (section 334 Criminal Code) and passive bribery (section 332 Criminal Code).

[100] This is partly due to the fact that those who bribe often aim at obtaining advantages, for example large-scale contracts, with a value that is several times higher than the cash bribe itself used to achieve this goal. See German Federal Criminal Police Office (2021), Federal overview on corruption 2020.

[101] German Federal Criminal Police Office (2021), Federal overview on corruption 2020.

[102] This is below the five-year average of EUR 133 million.

[103] Lobbyregister Law (16 April 2021). For more details, see also 2021 Rule of Law Report, Country Chapter on the rule of Law situation in Germany, p. 9.

[104] The need to enhance lobbying transparency has been a long-standing concern. See, for example, GRECO, Fifth Round Evaluation – Evaluation Report Germany, para. 63, and UNODC, Review of implementation of the United Nations Convention against Corruption. Executive summary - Germany. Only five of the 16 *Länder* have a lobby register in place. Information received from Transparency International in the context of the country visit to Germany. For more details, see Lobbyranking of the Länder 2022, https://lobbyranking.de/.

[105] Amendments are planned in a differentiated manner that protect fundamental rights. According to information received from LobbyControl in the context of the country visit to Germany, an amendment that would address concerns regarding the large scope of exemptions of interest representatives would have to include churches and religious communities, trade unions and employer associations to allow for their mandatory registration in the lobby register representing the most important lobby actors in Germany and that are so far not obliged to register. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 9.

[106] Coalition Agreement 2021-2025, p. 10. This would apply to heads of divisions and officers, according to information received by the Government in the context of the Member State consultation.

[107] German Federal Parliament (2022), Handbook for interest representatives to register in the lobby register. Breaches of the code will be registered for a period of 24 months with the exclusion of the respective lobbyists from the register. The failure to register as a lobbyist will lead to sanctions, including a fine of a maximum of EUR 50 000.

[108] Lobbycontrol (2021), 'The lobby register is coming – Our evaluation', similarly, contribution from Transparency International Germany for the 2022 Rule of Law Report, p. 1. Instead, the administrative authority shall be the Secretary-General of the Parliament, according to information received by the Government.

compliance monitoring[109]. The new Government plans the introduction of a 'legislative footprint'[110] or a digital legislative portal to publish who sought to influence legislative drafts.[111] The collection and disclosure of comprehensive information on who influences whom in the decision-making process would help to ensure a level playing field for all interest representatives contributing to balanced legislative outcomes[112]. It would also help to ensure that risks of corruption, conflicts of interest and regulatory capture is reduced, while the public interest is at the legislation's core. The timeline for the introduction of the new transparency tool is scheduled for the end of 2022[113].

Different post-employment rules remain a concern[114]. In case of concerns of interference with the public interest, the Federal Government can prohibit, wholly or in part, the taking up of new employment of high-ranking public officials[115]. For federal ministers and federal parliamentary state secretaries, the cooling-off periods are much shorter with a 12-18 months period, compared to the period applicable to state secretaries and directors general of three to five years, and thus could warrant a longer mandatory cooling-off period[116]. Despite international recommendations[117], the Federal Government does not currently plan to address the persistent concerns as to the different application of Germany's 'revolving doors' rules, including varying cooling-off periods and the large discretion in the decision of superiors regarding future employment of state secretaries and directors general.

The administration of the Federal Parliament is working on guidelines to interpret rules on remunerated side jobs of members of Parliament. The amended Act on members of the

[109] Concerns exist by stakeholders regarding the ceiling of fines at EUR 50 000, which is considered to be too low particularly for larger and global enterprises, as well as the lack of public information on whether breaches were fined, as reputational risk may have a greater effect than monetary fines. Contribution from Transparency International Germany for the 2022 Rule of Law Report, p. 1; information received from LobbyControl in the context of the country visit to Germany. Notably, the Lobbying Register Act provides some public information on significant breaches by special interest representatives of the code of conduct, thus taking into account that reputational risks can have greater effects than monetary fines. According to the Lobbying Register Act, the measures provided for must also be proportionate and no more restrictive than is required.

[110] A legislative footprint is a comprehensive public record of lobbyists' influence on a piece of legislation.

[111] Coalition Agreement 2021-2025, p. 10.

[112] Especially the influence of large-scale enterprises and business associations, including from Germany's automobile industry, that use significant resources to influence Germany's decision-making process have been in focus, while several scandals, such as Wirecard and the mask affair, recently broke. See, for instance, LobbyControl (2021), Lobbying undermines democracy – Ten theses.

[113] Information received from Administration of the Parliament in the context of the country visit to Germany.

[114] 2021 Rule of Law Report, country chapter on the rule of law situation in Germany, p. 9.

[115] The future employment is assumed to interfere with the public interest, if it is pursued in an area in which the member of the Government or parliamentary state secretary was active during his/her term in office or may otherwise undermine public trust in the integrity of the Federal Government. For more details on the procedure, see GRECO Fifth Evaluation Round – Evaluation Report, paras. 86 et seq., indicating several cases where future employment was restricted, see footnote 89.

[116] Stakeholders, including LobbyControl and Transparency International, call for a three-year cooling-off period to better prevent and reduce risks of undue influence, see for instance LobbyControl, Lobbypedia – Cooling-off Period.

[117] GRECO Fifth Evaluation Round – Evaluation Report, paras. 89 and 91. Political servants and Directors-General are subject to cooling-off regulations stipulated in Civil Servants Act, section 105; and the 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 9. Restrictions on 'revolving doors' and accompanying disclosure requirements for current and former members of the Federal Government and parliamentary state-secretaries are laid down in the Act Governing the Legal Status of members of the Federal Government (section 6(a) and 6 (b), which apply mutatis mutandis to parliamentary state secretaries) and the Act on the Legal Relationships of Parliamentary State Secretaries.

Federal Parliament[118] adopted in June 2021 addresses integrity challenges with regard to members of Parliament[119]. The reform includes a prohibition for members of Parliament of remunerated lobby activities as side jobs and of remunerated lectures that are in connection to their parliamentary work. Supervision and enforcement may present obstacles in practice due to the lack of a fully independent oversight body or ethics committee with a mandate to investigate breaches[120]. The amendment does not entail the disclosure of the actual time spent on the side job[121]. Similarly, ad hoc disclosures are not required when a conflict between specific private interests of a member of Parliament emerges in relation to a matter under discussion in Parliament[122]. There were several cases of delays in the reporting of parliamentarians' side activities in 2021[123].

Germany finalised the 2021 internal review of its rules on asset declarations, with some concerns remaining. The review did not result in addressing the lack of regulation for members of the Federal Government to disclose assets and properties[124]. For members of the Federal Parliament, the categories of information to be disclosed in their financial declarations was also not extended to liabilities and significant assets, such as shareholdings in private enterprises below the current threshold[125]. Similarly, Germany does not intend to widen the scope of declarations to also include information on spouses and dependent family members[126]. The assets and financial interests of members of Parliament are subject to notification, if the respective member is in charge of an issue in a parliamentary committee and, at the same time, remunerated through a secondary activity[127].

[118] Law amending the Act on Members of the Bundestag - Improvement of the transparency rules for members of the German Bundestag.

[119] UNODC, Review of implementation of the United Nations Convention against Corruption, Executive summary - Germany, Implementation Review Group (January 2020); and GRECO Fourth Evaluation Round – Interim Compliance Report.

[120] Information received from LobbyControl and Transparency International in the context of the country visit to Germany. The Administration of the Parliament has a limited mandate to investigate and is staffed by political parties. See also GRECO Fourth Evaluation Round – Interim Compliance Report, para. 36, p. 8.

[121] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10.

[122] GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 14-17, p. 4.

[123] Transparency International Germany (2021), 'More than 20.000 euros: Özdemir has also forgotten to report special payments'; Transparency International Germany (2021), 'Lauterbach reports fees belatedly'; Transparency International Germany (2021), 'Ancillary income: Hundreds of thousands of euros from MEPs remained undiscovered for years'; Abgeordnetenwatch (2021), 'Many representatives breached transparency rules'.

[124] GRECO Fifth Evaluation Round – Evaluation Report, para. 95. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10, and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 7. Information received from the Ministry of Justice, Ministry of Interior, the Administration of the Parliament and Transparency International in the context of the country visit.

[125] Members of the Parliament are only obliged to disclose shareholdings in private corporations or partnerships if they possess more than 25 per cent of the voting rights. GRECO Fourth Evaluation Round – Interim Compliance Report, para. 37, p. 8. UNCAC Country Review Report of Germany, Review Cycle 2016-2021, p. 5. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10, where it was reported that the amendment to the Act on Members of the Federal Parliament included a provision to disclose their financial holdings in unincorporated companies and companies with share capital above 5% as well as the revenues of such holdings.

[126] Information received from the Ministry of Justice in the context of the country visit to Germany. See, however, GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation iii, paras 18-19.

[127] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10.

Germany plans to revise its political party financing rules to introduce more transparency in decision-making. Party financing is regulated in the Law for Members of the Parliament and the Law for Political Parties[128]. The new coalition agreement includes plans to regulate sponsoring and hidden campaign finance by third parties[129]. In this context, donations for parties above EUR 35 000 (instead of EUR 50 000, as is currently the case) would have to be notified to the President of the Parliament and made public in the future. In addition, the threshold for donations to be publicly disclosed by parties in their annual accountability report[130] would be lowered from EUR 10 000 to EUR 7 500. Furthermore, it is planned to increase the human and financial resources of the Parliament's administration to strengthen its oversight and control functions in this regard[131]. It is however not clear whether it would have access to the tax information of donors for the monitoring of the regularity of party finance, in order to be able to cross-check data during the verification process of statements of accounts of political parties[132]. Concerns remain regarding the significant time lapse between the party income and its reporting[133].

New rules on whistleblower protection are still in preparation. The legislative initiative of the Federal Ministry of Justice to introduce a comprehensive whistleblowing legislation failed to receive the full support of the government coalition in 2021[134]. A new draft law was published in April 2022[135]. Until adoption, the general protections against retaliation for whistleblowers remain fragmented across several pieces of legislation.[136]. In practice, also several contact points for whistleblower disclosures are in place at the federal and state level[137] who facilitate the disclosure and investigation of corruption offences. The fragmentation across institutions and administrative levels has been criticised, as potential

[128] International reviewers have repeatedly pointed out the need for lower thresholds and strengthened record-keeping, while sponsoring remains largely unregulated despite its potential to buy access to important government officials. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 11. See also UNCAC, Review of implementation of the United Nations Convention Against Corruption, Review Cycle 1 (Chapter III and IV), Executive Summary: Germany, Implementation Review Group (July 2020), and Review Cycle 2 (Chapter II and V), Executive Summary: Germany, Implementation Review Group (January 2019).

[129] Coalition Agreement 2021-2025, p. 10.

[130] Political parties are obliged to submit annual financial reports to the President of the Federal Parliament including on political party assets, liabilities, income and expenditure in both campaign and off-campaign periods, according to the German Political Parties Act. 2021 Rule of Law report, Country Chapter on the rule of law situation in Germany, pp. 10-11.

[131] Coalition Agreement 2021-2025 p. 10.

[132] Concerns in this regard are flagged in UNCAC Country Review Report of Germany, Review cycle 2016-2021, p. 67.

[133] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10. Information received from LobbyControl in the context of the country visit to Germany, emphasising that there is no intention to shorten the lapse of time. Notably, the accountability reports of 2021 are expected to be published in 2023.

[134] Draft law on whistleblower protection. The draft law was intended to transpose EU Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (2019/1937) but failed at the end of the legislature due to the lack of agreement between the coalition partners of the previous Government.

[135] Press statement of the Ministry of Justice (2022), Better protection for whistleblowers

[136] Protections exist in Germany's Basic Law, the Criminal Code, the Civil Code, labour law and case law, see UNCAC Country Review Report of Germany, Review Cycle 2016-2021, p. 5.

[137] This includes the Anti-Corruption Appointees, the Specialised Ombudspersons, such as the Armed Forces Ombudsman at the federal level, and the Citizen Ombudsmen and Confidence Lawyers at the state level. Cf. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10.

whistleblowers might have difficulties in identifying the appropriate disclosure channels[138]. The Federal Police indicates a trend in previous years of approximately three quarters of corruption proceedings being initiated upon disclosures from such sources, including whistleblowers[139].

Pandemic-related corruption risks continue to exist, with several cases under investigation, while additional preventive measures were taken. Several procurements of protective face masks that had been brokered by active and former members of Parliament and their relatives, who had obtained commission payments for the facilitation of contracts, were discovered and investigations were launched and continued in 2021[140]. One case of alleged passive bribery of members of the Parliament who have brokered facemask deals is pending at the Federal Supreme Court[141]. Since December 2021, Germany's electronic competition register in support of public procurement processes is operational, enhancing the prevention of corruption during and in the aftermath of the COVID-19 pandemic[142]. Since then, there is an obligation to report relevant crimes and misdemeanours to the register hosted by the Federal Cartel Office. The register hosts and flags information for public contracting authorities that is relevant for the exclusion of bidders from the procurement, including on final convictions, penalty orders and fines for corruption, bribery, money laundering, tax evasion, and other serious crimes[143]. Public contracting authorities will be under the obligation to consult the competition register in this regard as of 1 June 2022[144].

III. MEDIA PLURALISM AND MEDIA FREEDOM

In Germany, the Basic Law and secondary legislation form a well-established legal framework, guaranteeing media freedom and pluralism as well as the right of access to information[145]. The main legislative competence in the area lies with the *Länder*, which conclude state treaties to establish a common media policy framework, including notably the State Media Treaty[146]. This is completed by national legislation and safeguarded by constitutional guarantees and the relevant jurisprudence of the Constitutional Court. The federal structure results in a variety of legal frameworks, supervisory structures and public service broadcasters providing an additional safeguard for media pluralism and media freedom[147].

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138 Transparency International Germany (2018), Comments and Recommendations to UNCAC Second Review Cycle, p. 3.

139 Information received from the Federal Criminal Bureau of the police in the context of the country visit to Germany.

140 See, for instance, Bayrischer Rundfunk (2021), 'Mask deals – Tax investigations against Andrea Tandler'; Tagesschau (2021), 'Mask affair – kisses and commissions'.

141 Die Zeit (2021), 'BGH must deal with mask affair'.

142 Input from Germany for the 2022 Rule of Law Report, p. 20. See also section 123(1) and (4) of the Act against Restraints of Competition. The Act to Introduce the Competition Register for Public Procurement entered into force on 29 July 2017. The register is set up at the Federal Cartel Offices. UNCAC, Country Review Report of Germany, Review Cycle 2016-2021, p. 32.

143 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 11.

144 Input from Germany for the 2022 Rule of Law Report, p. 20.

145 2020 and 2021 Rule of Law Reports, Country Chapters on the rule of law situation in Germany.

146 The state treaties on media do not regulate the press (with the exception of the digital press). There are press laws at the level of the *Länder*.

147 Germany ranks 16th in the 2022 Reporters without Borders World Press Freedom Index compared to 13th in the previous year.

The independence of the 14 State Media Authorities[148] functioning as regulatory authorities for commercial broadcasters remains ensured[149]. There have been no major changes in the legal framework concerning the State Media Authorities since the 2021 report. Their financial independence remains guaranteed, with the budget ensured by a share of the broadcasting fee for households[150]. The media authorities have now adopted all of their statutes required under the revised State Media Treaty and are fully applying the revised framework, which entered into force in November 2020[151].

The self-regulation of the press remains effective, but the extension of the framework to new online media outlets brings challenges[152]. The number of complaints received by the self-regulatory Press Council, composed of journalists' and publishers' associations, in 2021 has decreased notably, but remains at a high level (2 556 complaints received in 2021, compared to 4 085 in 2020 and 2 175 in 2019)[153]. Overall, the Press Council issued 60 public reprimands in 2021 of which 80% have been published. About a third of these reprimands related to violations of the protection of privacy as defined in the Press Code[154]. The last revision of the State Media Treaty has introduced the possibility for certain online media with journalistic content to comply with their obligation to adhere to recognised journalistic principles by joining the Press Council and committing themselves to its Press Code[155]. Journalist representatives indicate that the Council still needs to gather further experience and establish practices for how to best deal with these new type of media outlets[156]. The 2022 Media Pluralism Monitor does not see a risk of commercial or political influence on editorial decisions[157].

There are no issues signalled regarding the transparency of media ownership which is well developed. The legal framework requires commercial broadcasters to report ownership information and plans affecting the shareholders' structure. It also sets out the requirements for broadcasting licences. Additional provisions ensure transparency of ownership for online news media and the press[158]. Access to the information covering television, radio, press and online media remains ensured via a public database of the Commission on Concentration in the Media (KEK) of the state media authorities[159]. The 2022 Media Pluralism Monitor concludes that there is a low risk regarding the transparency of media ownership[160].

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148 The 14 State Media Authorities are established at the level of the Länder, with Berlin and Brandenburg as well as Hamburg and Schleswig-Holstein having agreed on common State Media Authorities.

149 2022 Media Pluralism Monitor, pp. 10-11.

150 State Media Treaty, s. 112.

151 Information received from the Media Authorities in the context of the country visit to Germany.

152 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 12.

153 Press Council (2022), Annual Report 2021.

154 Press Council (2022), Annual Report 2021. A public reprimand, obliging the concerned media outlet to publish a correction, is the most far reaching sanction of the German Press Council (to protect those affected, the Council may also decide to pronounce a non-public reprimand, this was the case for one reprimand in 2021).

155 State Media Treaty, s. 19.

156 Information received from the German Federation of Journalists and the German Journalists Union in the context of the country visit to Germany.

157 2022 Media Pluralism Monitor, pp. 13-14.

158 See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 12.

159 KEK (2022), Media concentration.

160 2022 Media Pluralism Monitor, p. 12.

The *Länder* have initiated the process to update the rules on media concentration. While the state media laws contain provisions on media concentration across the press and broadcasting sector, the State Media Treaty regulates ownership concentration in television, under the regulatory supervision of the KEK[161]. The 2022 Media Pluralism Monitor indicates a medium risk on its news media concentration indicator. It states that the current media concentration control system, which was created for a traditional media environment and focuses on nationwide linear broadcasting, does not prevent a high degree of horizontal ownership concentration and would need to be updated to take into account today's digital environment[162]. The need to establish a future-proof media concentration framework was already concluded in a protocol declaration of all *Länder* in the context of the conclusion of the State Media Treaty in 2020[163]. The relevant working group of the *Länder* has now started to discuss a future revision of the current rules on concentration[164].

The legal framework safeguards the independence of the public service broadcasters and guarantees a pluralistic offer. The system of public service broadcasters at regional and national level, gathered in ARD and ZDF[165], ensures a pluralistic public service broadcasting structure and programming. The legal framework for both regional and national public service broadcaster ensures independent supervisory structures, in particular in the form of broadcasting councils responsible for the supervision as regards the programming of the broadcasters, and administrative councils, responsible for the supervision of the management and financial affairs of the broadcasters[166]. The supervisory bodies are intended to reflect society with its members being nominated by relevant social groups, such as representatives from employer and trade associations, employee organisations, churches, cultural or educational institutions as well as representatives of the *Länder* and their parliaments[167]. The members of the supervisory councils are mandated to act independently. Following the jurisprudence of the Federal Constitutional Court, the number of political representatives in such supervisory bodies is limited to one third of the members[168]. The financing in the form of a broadcasting fee secures the financial independence of the public service broadcasters. Overall, there are strong safeguards for the independence of the public service broadcasters[169], ensuring a pluralistic programming. The *Länder* launched in November 2021 a public consultation on the future mandate and structure of the public service broadcasters with a view on a reform reflecting the digital transformation in the media sector[170]. Based on

[161] State Media Treaty, s. 60.

[162] 2022 Media Pluralism Monitor, p. 13. The 2022 MPM concludes that in the area of market plurality there are three areas showing a medium risk: news media concentration, online platforms concentration and competition enforcement as well as media viability.

[163] State Treaty for the Modernisation of the Media Regulation in Germany.

[164] Information received from the Media Authorities in the context of the country visit to Germany.

[165] Germany's public service broadcasting consists of the ZDF, Deutschlandradio and the ARD, which is the joint organisation of the country's nine regional public service broadcasters.

[166] Contributions from ARD, ZDF and Reporters without Borders for the 2022 Rule of Law Report.

[167] Input from Germany for the 2022 Rule of Law Report, p. 28.

[168] German Federal Constitutional Court, judgment of the First Senate of 25 March 2014, *1 BvF 1/11*, paras. 1-135.

[169] The 2022 Media Pluralism Monitor concludes there is a low risk regarding the independence of public service media and its financing in Germany.

[170] Rundfunkkommission der Länder (2021), Draft discussion paper on the order and structural optimisation of the public service broadcaster.

the results of this consultation, the *Länder* agreed in June 2022 to a legislative proposal amending the State Media Treaty, to be adopted in the following months[171].

There is a solid framework for the journalists' access to information, but stakeholders see further room for improvement. At national level, the Constitution and the Freedom of Information Act provide for the access to information[172]. However, as already noted in the 2021 Rule of Law Report[173], journalist representatives see certain gaps in the framework, in particular as regards requests for access to information from federal authorities[174]. GRECO has also addressed a recommendation to Germany regarding the Freedom of Information Act[175]. A recent judgment of the Federal Administrative Court confirmed that journalists have a right of access to information vis-à-vis federal authorities[176]. In most *Länder*, there are press laws in place guaranteeing the access to information by journalists. However, there are noteworthy divergences in the legislation of the *Länder*[177]. In its coalition treaty, the Federal Government has announced that it will create a legal basis for a right to information of the press as regards federal authorities[178].

While authorities at both federal and Länder level are making efforts to increase the safety of journalists, particularly when covering protests, incidents relating to physical aggression and online threats remain a serious concern[179]. As in 2020, also in 2021 protests related to COVID-19 measures/vaccines were a particular hotspot for aggressions against journalists[180]. Preliminary police statistics for 2021 indicate a total of 276 registered criminal offences in the broad target category 'media'[181]. These 276 cases included 49 cases of threats and 30 cases of violent offences, of which 27 qualified as personal injuries[182]. In addition, verbal attacks and online hate speech and threats targeting journalists have been reported to be common[183]. Since the last report, the Council of Europe's Platform to promote the protection of journalism and safety of journalists has registered five alerts relating to events in Germany[184]. For the year 2021, the Mapping Media Freedom project recorded 119

[171] State Government of Rheinland-Pfalz (2022), Amendments to the State Media Treaty adopted - brand of public service broadcasting strengthened.
[172] Basic Law, Art. 5(1).
[173] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 13.
[174] Reporters without Borders, Germany; Contribution from Reporters without Borders for the 2022 Rule of Law Report, p. 18; Information received from the German Federation of Journalists and the German Journalists Union in the context of the country visit to Germany.
[175] GRECO has recommended that the Freedom of Information Act should be independently evaluated and possible improvements should be considered on this basis, notably as regards exceptions allowing to decline requests under the Act. See GRECO Fifth Evaluation Round – Evaluation Report, para 57.
[176] German Journalists' Association, Right to information under press law from federal authorities; Federal Administrative Court, Summary of Case law on access to information of the Federal Intelligence Service.
[177] Open Knowledge Foundation (2021), Transparency Ranking.
[178] Coalition Agreement 2021-2025, p. 124.
[179] Information received in the context of the country visit to Germany from the German Federation of Journalists and the German Journalists Union; Input from Germany for the 2022 Rule of Law Report, pp. 31-32; Reporters without Borders, Germany.
[180] Mapping Media Freedom – Monitoring Report 2021, p. 21.
[181] Reply of the German Federal Government to Parliamentary Question on Attacks on media professionals in the context of pandemic-related protests (Bundestag Drucksache 20/949). 39 cases registered in these statistics are linked to Covid-19 in the context of protests.
[182] Ibid.
[183] Contribution from Reporters without Borders for the 2022 Rule of Law Report, p. 17.
[184] Council of Europe, Platform to promote the protection of journalism and safety of journalists, Germany.

alerts[185]. The registered incidents relate to physical aggressions, verbal insults as well as online threats against journalists. Overall, these concerns have a notable impact on the professional environment for journalists and in particular their reporting of protests. Media outlets often provide private security guards to protect journalists at protests[186]. The Mapping Media Freedom project and Reporters without Borders also refer to alleged cases of aggressions or threats by police officers against journalists[187]. However, it is not clear to which extent or whether these allegations have been investigated or confirmed by official authorities. The Conference of the Ministers of Interior of the *Länder*, the Press Council and further media stakeholders currently discuss an update of the existing principles of conduct for the media and the police[188]. Police authorities in some regions have increased efforts to protect journalists during protests, for example by establishing safe spaces for media workers[189]. The 2022 Media Pluralism Monitor concludes that the increasing violence against journalists can be considered concerning[190].

Civil society and journalist associations point to some further developments of concern regarding the professional environment for journalists. While the legal framework remains generally effective at preventing strategic lawsuits against public participation (SLAPP) targeting journalists[191], also in Germany there are some cases of abusive litigation against journalists[192], as highlighted by a call of media organisations and civil society organisations (CSOs) on the issue in 2021[193]. CSOs and journalist associations continue to see potential risks of journalists being subject to electronic surveillance measures by intelligence services, in particular when interacting with potential informants, and have announced a joint appeal against the recent legal reform adopted in June 2021, allowing Germany's intelligence services to use software tools to monitor communications[194].

[185] Mapping Media Freedom – Monitoring Report 2021, p. 11. The annual Mapping Media Freedom Monitoring Report for 2021 states that 'While the high number of alerts can partly be explained by the strength of the MFRR network in Germany, it clearly confirms a trend in the deterioration of press and media freedom, especially when it comes to the coverage of demonstrations […]'.

[186] Mapping Media Freedom Monitoring Report 2021, p. 21.

[187] Mapping Media Freedom, country profile Germany; Reporters without Borders (2022), Close-up view Germany.

[188] Input from Germany for the 2022 Rule of Law Report, p. 31; Press Council (2022), Annual Report 2021, p. 20.

[189] Information received from the German Federation of Journalists and the German Journalists Union in the context of the country visit to Germany; Input from Germany for the 2022 Rule of Law Report, p. 31.

[190] 2022 Media Pluralism Monitor, p. 10.

[191] 2022 Media Pluralism Monitor, p. 10; Information received in the context of the country visit to Germany from the German Federation of Journalists and the German Journalists Union. In many cases, pre-litigation mechanisms lead to potential cases of strategic lawsuits against public participation (SLAPPs) being dismissed before reaching court. According to German authorities, in May 2022 courts reported that they have not received any SLAPP cases.

[192] Reporters without Borders, Germany; Input from Reporters without Borders for the 2022 Rule of Law Report, p. 19.

[193] German Journalists' Association (2021), Press release – SLAPPS: Against the abuse of claims

[194] Reporters without Borders (2021), RSF and Journalists sue against 'state trojans'; Contribution from Human Rights Watch for the 2022 Rule of Law Report, p. 17. Human Rights Watch (2021), Germany's New Surveillance Laws Raise Privacy Concerns.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Germany is a federal republic, with powers distributed between the federal and the sixteen state Governments. The separation of powers is enshrined in the Basic Law[195] and the constitutions of the *Länder*. At the federal level, federal legislative power is vested in the Federal Parliament (*Bundestag*) and the representative body of the *Länder* (*Bundesrat*)[196]. The Government, the *Bundesrat* or members of the *Bundestag* can submit legislative proposals[197]. Constitutional review is ensured by the Federal Constitutional Court and the constitutional courts of the *Länder*. The German Human Rights Institute and the Federal Anti-Discrimination Agency contribute to upholding fundamental rights.

The Government plans to improve the transparency and inclusiveness of law-making, which could address challenges identified by stakeholders in the past. However, the Government coalition agreement contains an overall commitment to improve quality of law making, including early consultation of stakeholders and the creation of a digital portal on the law-making process, where the state of play of a proposal will be presented and comments can be submitted[198]. While concrete details are yet to be announced, this could respond to criticism raised by some stakeholders over short or very variable consultation periods, especially but not only related to measures taken in the COVID-19 pandemic[199] or overall insufficiently transparent consultation procedures on draft legislation[200]. Currently, the Federal Government's central platform on consultation procedures only brings together information on the existing sites of Ministries and agencies[201].

Germany's restrictions related to the COVID-19 pandemic have progressively eased and been subject to constitutional review. As noted in the 2021 Rule of Law report, the Infection Protection Law (IfSG) contained powers for the Federal Government and the *Länder* to take measures under the IfSG[202], which could only be exercised as long as the *Bundestag* has declared a "state of epidemic"[203]. On 18 November 2021, Parliament passed amendments to the IfSG, which allowed the Government to maintain certain restrictions and obligations[204] to combat the pandemic in place until 19 March 2022 and, at the same time, the 'state of epidemic' expired on 25 November 2021[205]. As a result, *Länder* could adopt certain

[195] Article 20 Basic Law.
[196] Articles 70 *et seq*. Basic Law.
[197] Proposals by the *Bundestag* can be submitted by (at least) 5% of its members. In practice, most proposals emanate from the Government.
[198] Coalition Agreement 2021-2025, pp. 9-10.
[199] This can lead to the impression by civil society organisations that consultations are a mere formality. Contribution from ENNHRI for the 2021 Rule of Law Report – Germany, p. 6. A specific example cited relates to the legislation surrounding the expiration of the national epidemiological situation (see also below) – contribution from the German Bar Association for the 2022 Rule of Law Report, p. 18.
[200] Stakeholders have e.g. criticised that draft legislation might only be shared via the press or to individual contacts but not published in a timely manner for a consultation process. Contribution from the German Federal Bar for the 2022 Rule of Law Report, p. 23.
[201] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 15.
[202] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 16.
[203] First Law on the protection of the population in cases of epidemic situations of national relevance.
[204] For example, the possibility to prescribe distancing, wearing of masks or presenting vaccination, recovery or testing certificates. Federal Parliament (2021), Follow-up rules on the occasion of the lifting of the epidemic situation.
[205] Federal Ministry for Health (2021) Law amending the Infection Protection Law and other laws on the occasion of the repeal of the determination of the epidemic situation of national importance. Federal Parliament (2021) Follow-up rules on the occasion of the lifting of the epidemic situation.

restrictive measures[206] to the extent that there was a concrete epidemic danger and subject to the approval of the regional parliaments[207]. In 2021, a considerable share of the constitutional complaint proceedings concerned measures taken to combat the pandemic[208]. In the period between March 2021 and February 2022, the Federal Constitutional Court received 465 new constitutional complaints against pandemic measures and decided on 318 such complaints[209]. The complaints against the restrictive measures adopted to combat the COVID-19 pandemic also constituted an important share of cases at the administrative courts[210]. On 19 November 2021, the German Federal Constitutional Court ruled on a number of constitutional complaints challenging the constitutionality and proportionality of the amendments adopted in April 2021 (the so-called 'emergency brake')[211], and which had expired on 30 June 2021[212]. Though the measures in the emergency brake constituted a strong interference with fundamental rights, the Federal Constitutional Court found that they were proportionate and in accordance with the German Basic Law[213].

Following formal commitments by Germany clearly recognising the primacy of EU law, the Commission has closed the infringement procedure concerning the judgment of the German Constitutional Court of 5 May 2020[214]. As noted in the 2021 Rule of Law Report, on 9 June 2021, the Commission had decided to send a letter of formal notice to Germany for violation of the principles of autonomy, primacy, effectiveness and uniform application of Union law, as well as the respect of the jurisdiction of the Court of Justice of the European Union under Article 267 TFEU[215]. On 2 December 2021, the Commission announced that it had closed the infringement procedure, in light of the strong commitments provided by Germany in the reply to the letter of formal notice. In particular, Germany formally declared that it affirms and recognises the principles of autonomy, primacy, effectiveness and uniform application of Union law. It explicitly recognised the authority of the Court of Justice of the

[206] However, the *Länder* could not adopt curfews or a general preventative closure of schools and day-care centres, of the gastronomic industry or of the retail sector. It was equally not possible to issue a general prohibition of religious services and gatherings or sport activities, or to prohibit travel and overnight accommodation. Federal Ministry for Health (2021), Law amending the Infection Protection Law and other laws on the occasion of the repeal of the determination of the epidemic situation of national importance.

[207] The German Bar Association welcomed the expiry of the state of epidemic. The association stressed that after the expiry the *Länder* were still able to take executive decisions and called for a greater involvement of the regional Parliaments. Contribution from the German Bar Association for the 2022 Rule of Law Report, p. 19.

[208] German Federal Constitutional Court (2022), 2021 Annual Report, p. 36.

[209] Written contribution received from the German Federal Constitutional Court in the context of the country visit, p. 2.

[210] For example, in the North-Rhine Westphalian administrative courts, the challenges against the COVID-19 restrictions at first instance in 2021 amounted to 10 442 cases received (both main and urgent cases), whereas in 2020, 1 473 cases were received. The proportion of these cases in all new disputes at the North-Rhine Westphalian administrative courts thus increased from about 3% in 2020 to 20% in 2021. At the same time, 664 cases (both main and urgent cases) were received by the Higher Administrative Court of North-Rhine Westphalia in 2021, compared to 483 in 2020. Higher Administrative Court of North-Rhine Westphalia (2022), Annual Report, pp. 12 and 20.

[211] This involved the automatic introduction of certain restrictive measures by federal law if a specific threshold of COVID-19 cases was reached over three days in a city or district See new §28b IfSG. Fourth Law on the protection of the population in cases of epidemic situations of national relevance adopted on 21 April 2021.

[212] Pursuant to Article 28b, paragraph 10, first sentence of the IfSG as applicable on 23 April 2021.

[213] German Federal Constitutional Court (2021), Constitutional Complaints on the 'Federal emergency break' unsuccessful.

[214] European Commission (2021), December infringement package: key decisions.

[215] European Commission (2021), June infringement package – key decisions; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 16-17.

European Union, the fact that measures taken by EU institutions cannot be a direct object of review in constitutional complaints and that courts of the Member States are required to refer questions for a preliminary ruling to the Court of Justice under Article 267 TFEU, including a second referral if necessary, as to whether an EU measure would exceed the EU competences, or risks violating the national identity of a Member State in disregard of Article 4(2) TEU. The German Government committed to using all the means at its disposal to ensure full recognition of the judicial powers assigned to the Court of Justice by the EU Treaties, in particular its power to issue binding and definitive rulings on the interpretation of EU law and the validity of EU measures.

On 1 January 2022, Germany had 13 leading judgments of the European Court of Human Rights pending implementation[216]. At that time, Germany's rate of leading judgments from the past 10 years that remained pending was at 37% and the average time that the judgments had been pending implementation was 3 years and 2 months[217]. The oldest leading judgment, pending implementation for 6 years, concerns the access to and the efficient functioning of justice in public trial[218]. On 1 July 2022, the number of leading judgments pending implementation remains 13[219].

The appointment procedure for the director of the Anti-Discrimination Agency, who had been in function *ad interim* for the past four years, has been reformed. As noted in the 2021 Rule of Law Report, during the entire last legislative period, the position of the director of the Federal Anti-Discrimination Agency had remained vacant[220]. Following an announcement in the coalition agreement[221], Parliament adopted legislative amendments that entered into effect on 28 May 2022 which provide that the head of the agency, who was previously appointed by the Ministry for Family Affairs, Senior Citizens, Women and Youth, will now be elected by Parliament on proposal from the Federal Government and appointed by the Federal President, for a period of five years, thereby decoupling the mandate from the legislative period. The amendments also set out a number of qualification criteria and defines the status of the head of the agency as the independent Federal Commissioner for antidiscrimination[222]. This amendment corresponds also to a previous proposal made by the advisory council of the agency[223]. The coalition agreement also commits to provide for

[216] The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken. Germany notes that it has submitted final Action Reports (and one Action Plan) in all of these cases.

[217] All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 44.

[218] Judgment of the European Court of Human Rights of 9 June 2016, *Madaus v. Germany*, 44164/14 pending implementation since 2016.

[219] Data according to the online database of the Council of Europe (HUDOC).

[220] The outcome of the selection procedure for the new director had been annulled in court due to a lack of compliance with the constitutional principle of merit. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 17.

[221] Coalition Agreement 2021-2025, p. 121. The Coalition Agreement also commits to ensuring the institution's independence and adequate resources.

[222] Law on the amendment of the general anti-discrimination law of 23 May 2022.

[223] The opinion provides for an election of the director by the Bundestag, following a proposal by the Government, for a period of five years (disconnecting it from the legislative mandate), with a possibility to

additional competencies and appropriate financial and human resources for the Federal Anti-Discrimination Agency. As regards the German Institute for Human Rights, the coalition agreement commits to increasing its financial and human resources, which corresponds to a long-standing demand of the Institute, which currently often relies on project-based funding[224]. The re-accreditation of the Institute, which functions as the National Human Rights Institution, was deferred by the Sub-Committee on accreditation (SCA) of the Global Alliance of Human Rights Institutions (GANHRI) for 18 months during the session in March 2022. In its deferral decision, the SCA in particular encouraged the German Institute for Human Rights to advocate for amendments to its mandate that would strengthen its protection mandate, including its capacity to monitor and have access to places of deprivation of liberty[225]. The Institute has proposed that the Federal Parliament change its rule of procedures, to ensure that the Institute is invited *ex officio* to parliamentary hearings, instead of relying on invitations by specific parliamentary groups, also to avoid any appearance of politicisation[226].

Civil society continues to face practical challenges due to the uncertainty of their tax-exempt status, while a reform of the rules has been announced. While civic space in Germany continues to be considered as 'open'[227], as noted in the 2020 and 2021 Rule of Law Reports, the legal uncertainty related to the political activity of civil society organisations (CSOs) with tax-exempt status continues to be a challenge in practice[228]. While an administrative decree adopted in January 2022 provides clarifications on the current situation in line with the case law of the Federal Finance Court[229], stakeholders continue to raise concerns over the limitations for CSOs to engage in 'political activity' while maintaining their tax-exempt status[230]. In particular, certain associations may be unable to carry out their charitable purpose without use of political means[231]. In this context, civil society continues to report about cases of pressure on CSOs by political actors through legal action and threats related to their tax-exempt status[232], which can lead them to refrain from taking any political

be renewed once. The opinion also asks for details of the selection procedure to be regulated in the law on anti-discrimination, referring also to Commission Recommendation 2018/951 on Standards for Equality in view of allowing for more independence of the Agency. German Federal Anti-Discrimination Agency, Advisory Council – Recommendations for a Reform of the procedure for the appointment of the Director.

224 Contribution from ENNHRI for the 2022 Rule of Law Report – Germany, p. 4.

225 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-25 March 2022. In addition, the SCA notes a number of points related to the selection and appointment of the head of the NHRI, the composition of the board of trustees, the term of office of the board of directors and the adequate funding of the institute.

226 Contribution from ENNHRI for the 2022 Rule of Law Report – Germany, p. 4.

227 Rating given by Civicus, Germany. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

228 2020 Rule of Law report, Country Chapter on the rule of law situation in Germany, p. 12 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 17.

229 Ministry of Finance (2022), Revision of the administrative decree on the Fiscal Code.

230 Contribution from Allianz für Rechtssicherheit für politische Willensbildung for the 2022 Rule of Law Report, pp. 18-19. Contribution from ENNHRI for the 2022 Rule of Law Report, p. 5. Contribution from Civil Liberties Union for Europe for the 2022 Rule of Law Report – Germany, pp. 8-9.

231 This would include means such as protests or petitions. In addition, not all charitable organisations can identify a defined charitable purpose in the tax code that captures their activity. Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Germany, p. 4. See also Contribution from Allianz für Rechtssicherheit für politische Willensbildung for the 2022 Rule of Law Report, pp. 18-19 and Contribution from Civil Society Europe for the 2022 Rule of Law Report, p. 9.

232 This can e.g. take the form of parliamentary questions asking to revoke the tax-exempt status of the organisations working against right-wing extremism that have criticised individual political parties or their

positions or engaging in advocacy work, and have started to systematically document such cases[233]. The coalition agreement includes the commitment to present a legislative amendment that would clarify that charitable organisations can, within their charitable purpose, conduct political activity and can also occasionally take political positions on other issues outside its main field of activity[234]. Council of Europe recommendations underline that any form of public support for NGOs should be governed by clear and objective criteria[235]. To support civil society, the new Government also intends to present a 'democracy support law' in 2023, which responds to a demand from CSOs to create a more sustainable framework for federal funding for democratic engagement[236], as well as to develop a new national strategy for engagement in cooperation with civil society[237].

actions. Contributions from Allianz für Rechtssicherheit für politische Willensbildung and from Civil Liberties Union for Europe for the 2022 Rule of Law Report – Germany.

[233] An alliance of German civil society organisations has been formed to advocate for change in this area, which collects examples of concrete cases of such pressure on CSOs (*Allianz für Rechtssicherheit für politische Willensbildung*). See an anonymised list of examples of organisations affected by the loss of the tax-exempt status or related threats here: https://www.zivilgesellschaft-ist-gemeinnuetzig.de/beispiele-fuer-gemeinnuetzigkeitsprobleme/.

[234] Coalition Agreement 2021-2025, p. 117.

[235] Recommendation Rec(2007)14 of the Committee of Ministers of the Council of Europe on the legal status of non-governmental organisations in Europe, para 58.

[236] Contribution from ENNHRI for the 2022 Rule of Law report - Germany, p. 5. Position Paper by Bundesnetzwerk Bürgerschaftliches Engagement (2021) for the 2021 elections.

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Annex I: List of sources in alphabetical order*

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Annex II: Country visit to Germany

The Commission services held virtual meetings in March 2022 with:

- ARD
- Association of Judges
- Bundesnetzwerk Bürgerschaftliches Engagement (Network for Civil Engagement)
- EU Affairs Committee of the Justice Ministers' Conference
- Federal Administrative Court
- Federal Bar
- Federal Constitutional Court
- Federal Criminal Police, Anti-corruption unit
- Federal Supreme Court
- German Association of Judges
- German Association of Journalists
- German Bar Association
- German Institute for Human Rights
- German Publishers' Association
- German Union of Journalists
- Gesellschaft für Freiheitsrechte
- Joint Office of the Media Authorities
- Lobbycontrol DE
- Ministry of Justice
- Ministry of Interior
- Ministry of State for Culture and Media
- Prosecution Service
- Transparency International Germany
- ZDF

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe