



Deutscher**Anwalt**Verein

Position Paper

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

on the targeted stakeholder consultation of the
European Commission on the 2026 Rule of Law
Report

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Members of the Committee

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

Contact in Brussels:

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

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

www.anwaltverein.de

- Rechtsanwältin Dorothee Wildt, LL.M., Deputy Head of Office
- André Kutschmann, Legal Advisor

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

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

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Questions on developments in Member States

Under each pillar, you are invited to provide information on measures taken to implement the recommendations addressed to the Member State in the 2025 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2025 Rule of Law Report and any other significant developments since January 2025 and up to the date of submission¹. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in

¹ Unless already covered in the input for the previous Rule of Law Reports.

English). Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

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

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

☒ **Germany**

Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2025 Report regarding the justice system (if applicable) *5000 character(s) maximum*

We took note of the recommendations for Germany in the Country Chapter of the Rule of Law Report 2025, notably the recommendation to increase the resources of the judiciary and to address recruitment challenges, considering European standards on resources for the justice system.

The German Bar Association (hereinafter “DAV”) welcomed the announcement of the relaunch of the initiative “Pakt für den Rechtsstaat” (see [Press Release 32/25](#)), an initiative to strengthen both personal resources and the digitalisation in the justice sector. It had a volume of almost 500 million € and provided for the recruitment of new

judges and prosecutors (240 million €), a swifter digitalisation of justice (210 million €) as well as modernisation of civil and criminal procedural law.

The intention of introducing this new pact for the Rule of Law was confirmed by the Federal Secretary of State of Justice in an [interview with the Anwaltsblatt](#) in November 2025.

The funds should primarily be used for full-time public prosecutors and court employees in the offices and registers (legal clerks). This is where a particular shortage exists, as has been reported by the DAV repeatedly. In view of the anticipated wave of retirements in the judiciary, the governments of the Länder must ensure that retiring judges and prosecutors are replaced by new appointments.

A. Independence

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

(The reference to ‘judges’ concerns judges at all level and types of courts as well as judges at constitutional courts)

5000 character(s) maximum

Further Strengthening of a Resilient Justice System

While the DAV had been involved in the initiative amending the German Constitution (“Grundgesetz”) in order to strengthen the independence of the German Federal Constitutional Court, it is with regret that it notes that two of its recommendations have not been enacted and hence are not included in the Grundgesetz (cf. DAV [Position Paper 1/25](#), p. 5-6.):

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

Bundesrat. This would be consistent with the court's role in maintaining the balance of power between the Federal Government and the Länder and prevent a hijacking of the Constitutional Court by the Government.

Resilience of the Judiciary in the Federal States (“Länder”)

The DAV calls for further safeguards protecting the justice systems in the federal states (Länder) and supports initiatives such as the [“Judicial Resilience Project”](#).

After the strengthening of the Federal Constitutional Court in 2024, the State Constitutional Courts (**“Landesverfassungsgerichte”**) and other Courts in the Länder yet require protection against possible attempts to impair judicial independence (cf. DAV [statement](#) on 17 September 2024).

[The Judicial Resilience Project](#) identifies existing risks for a political takeover of the judicial institutions and necessary safeguards to strengthen the independence of the Justice system. The results of the project were [presented](#) to the public at the beginning of December 2025, see the related article in [Anwaltsblatt](#) dating back to August 2025.

- **Financial Autonomy and Protection Against Defunding:** Courts' positions in the budgetary process should be strengthened to prevent political influence through funding cuts. This could be achieved by increasing transparency regarding budgetary needs and by an obligation to provide justification if the requested funding is not approved, analogous to sections 28 and 29 of the Bundeshaushaltsordnung (Federal Act on the budget), see the [Final Report](#) of the Judicial Resilience Project, p. 271.
- **Need for an independent and uniform IT infrastructure:** Judicial IT infrastructure must be protected from executive control through clear organisational and technical separation. The existence of a large number of different information-processing applications (Fachverfahren) in the Länder leads to a lack of transparency, which in itself entails a significant potential for encroachment by the executive branch. Further development of the project for a uniform software application for the judiciary (**“Gemeinsames Fachverfahren für**

die Justiz” – GeFa) could improve the situation, provided that its implementation includes sufficient safeguards to prevent abuse by the executive, see the [Final Report](#) of the Judicial Resilience Project, p. 286.

- **Resilience of the State Constitutional Courts –**

(“**Landesverfassungsgerichte**”): Several structural elements of the State Constitutional Courts should be regulated in the Constitution of the respective State and not only by ordinary law. This applies to the procedures admissible before these Courts, the number and composition of senates, the election of its judges as well as the autonomy over its own rules of procedure ([Final Report](#) of the Judicial Resilience Project, p. 116).

- **Protection of the Procedural Law of the Constitutional Courts:** State constitutional courts should have mechanisms to review procedural and organisational interventions affecting them. One could consider that amendments of the procedural Law require qualitative majorities and transparency standards (See the [final Report](#), p. 115).

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

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

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

Unfortunately, the legislative negotiations were not concluded before the elections in February 2025, and the draft law was not taken up by the new federal government.

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)
5000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)
5000 character(s) maximum

Allocation of cases in courts
5000 character(s) maximum

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)
5000 character(s) maximum

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)
5000 character(s) maximum

Independence/autonomy of the prosecution service
5000 character(s) maximum

The right to give instructions to public prosecutors by the Secretaries of State of Justice continues to be debated in Germany. Under current law, the German public prosecutor's office is an authority bound by instructions (§ 146 GVG).

The reform intended by the last German Government intending to provide for more transparency and permitting instructions only if serving the prevention of unlawful actions of prosecutors has not yet been taken up by the newly elected administration. The DAV would have welcomed the new regulation, and especially its objective, even though public prosecutors are part of the executive and should not enjoy judicial independence, see the [Statement](#) in April 2024.

Independence of the Bar (chamber/association of lawyers) and of lawyers
5000 character(s) maximum

According to § 1 of the Federal Lawyers Act (Bundesrechtsanwaltsordnung, BRAO) lawyers are independent agents of the administration of justice. An essential prerequisite for such independence in Germany is the self-administration of legal professionals by means of bar associations, which in turn are subject to (though limited) legal supervision by the competent federal state ministries of justice. The essential values and duties of lawyers are secured by a system of self-administration of regional Bars, regrouped under the German Federal Bar since 1959 in addition to the German Bar Association (DAV). The DAV has represented the interests of German Lawyers in total independence via local bar associations, the membership of which is voluntary, since 1871. Efforts to limit the scope of self-administration by centralising the AML supervision have not been carried in the Anti-Money Laundering Package. This has been welcomed by Bars and law societies across Europe as the role of the bar associations has thereby not been eroded but acknowledged.

Council of Europe Convention for the Protection of Lawyers

The DAV welcomed the adoption of the Council of Europe Convention on the Protection of Lawyers on 12 March 2025 and its opening for signature on 13 May

2025. We took note of and much appreciate the announcement that Germany is planning to sign the Convention on 26 January 2026 (see [press release](#), Federal Ministry of Justice). The DAV continues to advocate for its swift ratification by Germany and the European Union.

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

In Germany, the protection of professional secrecy is laid down in several laws which are not always clear and sometimes contradicting. While the right to refuse to testify pursuant to section 160a of the German Code of Criminal Procedure (StPO) in conjunction with section 53 para. 1 no. 3 StPO and the absolute ban on the use of evidence collected in violation of these rules apply equally to defence counsel and other lawyers, Section 160 para. 5 in conjunction with Section 97 para. 1 no. 3 StPO provides for a lower level of protection for the seizure of evidence from lawyers who are not acting as defence counsel. This discrepancy has created a threat for professional secrecy in Germany and recent case law of the ECHR in the Jones Day decision has failed to balance the interest between the effectiveness of criminal prosecution and criminal defence (cf. [AnwBl 2024](#) on the Kock and others v. Germany Judgment of the ECHR, Applications nos. 1022/19 and 1125/19).

The Convention for the Protection of the Profession of Lawyers of the Council of Europe, which has been adopted in 2025 confirms the need for clarification by the German legislator.

Potential risks for Professional secrecy in the upcoming legislation on data retention for law enforcement

In its Position Paper No. [57/2025](#), the DAV criticises the European Commission's public consultation on an EU initiative concerning the retention of data by service providers for the purposes of criminal proceedings. By launching the public consultation, the Commission is taking the first step towards once again establishing rules at Union level that would allow data to be stored at a large scale for the purpose of law enforcement

(see already DAV Opinion No. [25/25](#) and “Europa im Überblick” No. [24/25](#)). However, the tendentious nature of the questions in the consultation questionnaire already gives rise to concern that the risks associated with data retention may not be sufficiently taken into account in the planned legislation, especially regarding potential infringements of the rights guaranteed in Article 7 of the EU Charter of Fundamental Rights (CFR) and Article 8(1) of the European Convention on Human Rights (ECHR) and professional secrecy.

In order to ensure confidentiality vis-à-vis clients, whitelisting procedures for holders of professional secrecy should therefore be examined, and data storage and access arrangements should be designed in compliance with fundamental rights. A legislative proposal of the European Commission is expected in the first quarter of 2026.

Implementation of the E-Evidence Package

The DAV welcomed the renewed draft law implementing the **E-Evidence Package**, but calls for improvements in the protection of professional secrecy and legal remedies, see [Position Paper 42/25](#). The DAV notably advocates for

- the possibility to challenge European Production Orders before the Courts before the data have been transferred to the issuing authority;
- the possibility to challenge the failure of the enforcing authority to raise grounds for refusal;
- a clarification to ensure the possibility of the accused person or of a lawyer on his or her behalf to request the issuing of a European Production Order or a European Preservation Order within the framework of applicable defence rights in conformity with national criminal procedure.

Reform of lawyers' statutory fees

The German Bar Association welcomed the parliament's adoption of the reform of the lawyers' statutory fees (see press release [14/25](#)), an initiative the German Bar Association had been constantly advocating for. The adjusted statutory schedule of fees provides for an increase of the value-based fees by 6 per cent and of the fixed fees by 9 per cent. This measure addresses the substantial inflation-related increase in personnel and operating costs faced by law firms and represents an important first step in safeguarding the continued provision of high-quality legal advice and representation by lawyers.

European Lawyers in Lesvos

Guaranteeing the principles of the rule of law and Access to Justice requires financial resources by the Member States. This also applies to projects such as European Lawyers in Lesvos that assure the safeguarding of fundamental rights, including pro-bono legal advice, filling the lacuna between the commitment of the Member States to respect fundamental rights of asylum applicants and the actual, flagrant lack of safeguards and legal assistance at European borders. As long as member states do not sufficiently provide for legal aid in asylum procedures and, by doing so, grant Access to Justice for persons in need of protection, initiatives as ELIL are necessary.

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

5000 character(s) maximum

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B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined in the introduction)

[single market relevance] Accessibility of courts (e.g. court/legal fees, legal aid, language)

5000 character(s) maximum

In civil cases, there is the dilemma that statutory fees for lawyers need to be increased to compensate for inflation on a rather regular basis, but that thereby the cost risk for the parties is equally increased and might deter parties from bringing their case to court. This could be mitigated if the fees for the court were not linked to lawyers' fees (and their increases) but be set independently. The justice system is an indispensable function of any democratic state organisation, and the notion that parties ought to substantially finance it is a misconception.

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

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

The need to improve the resources available to the judiciary persists. Notably the lack of personnel in public prosecution offices persists. This leads to prolonged and delayed criminal investigations. Lawyers frequently experience difficulties reaching prosecutors by phone. The anticipated wave of retirements in the judiciary during the next decade will remain a challenge, especially in urban areas. On the other hand, chambers at a number of regional and higher regional courts have stated during the past years that their workload is decreasing.

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

[single market relevance] Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)

5000 character(s) maximum

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

5000 character(s) maximum

With regard to the digitalisation of the Justice sector in Germany (as with regard to digitalisation in general), considerable challenges persist.

The initially fixed date (1 January 2026) for the electronic storage and management of newly created files will not be met. Especially in criminal law procedures, case files are often still kept only in paper form, which leads to delays in granting access to files and requires additional resources for scanning, sending, and packaging documents.

Audio(-visual) Documentation of Criminal Court Proceedings

With regard to the digital documentation of main hearings in criminal proceedings, no new legislative initiative has been taken. Unlike in most other European countries, criminal trials in Germany are generally not recorded. As a result, no official verbatim records of witness testimony exist, leaving Germany behind prevailing and long-established European standards.

The previous legislative initiative has stalled in the conciliation committee between the two parliamentary chambers and has not been resumed since the federal elections in February 2025. For many years, the DAV has strongly advocated the introduction of audio, and where appropriate audio-visual, documentation of criminal court proceedings. In its press release [06/24](#), the DAV set out in detail why such documentation is indispensable, highlighting in particular the benefits for transparency and accuracy, alignment with European standards, modernisation of the justice system, the protection of witnesses, and increased efficiency of criminal proceedings.

The DAV therefore calls upon the Federal Government to take the necessary legislative measures without further delay.

Implementation of the “Federal Justice Cloud”

The DAV welcomes the inclusion of the Unified Federal Justice Cloud (“bundeseinheitliche Justizcloud”) among the objectives of the new federal government. According to the coalition agreement, the project is to be implemented jointly by the federal government (Bund) and the federal states (Länder). At present, however, implementation is still at an early stage. In early January 2026, the Federal Ministry of Justice and the Länder concluded an agreement on the further development of the Justice Cloud. The first operational version is expected to be available at the beginning of 2027. In an initial phase, the Justice Cloud will facilitate the deployment of the uniform software application for the judiciary (“Gemeinsames Fachverfahren der Justiz”), see the [press release](#) by the Federal Ministry for Justice of 7 January 2026.

The coalition agreement further provides for the establishment of a justice portal comprising a communication platform, an enforcement register and additional digital services for citizens, such as a digital legal applications service and access to electronic legal communication for citizens and small businesses. This proposal originates from the final report of the Reform Commission on “Civil Procedure of the Future” (“Reformkommission Zivilprozess der Zukunft”), further information can be found in [Anwaltsblatt](#).

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

5000 character(s) maximum

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

5000 character(s) maximum

[single market relevance] Specialisation (of judges/specific courts/chambers within courts) and training for the judiciary to deal with commercial cases, as well as alternative dispute resolution mechanisms and mediation as regards commercial cases.

5000 character(s) maximum

On 1 April 2025 the law to strengthen Germany as a location for justice (“Justizstandortstärkungsgesetz”) fully entered into force providing for the possibility to establish specialised Commercial Courts. Whereas the DAV welcomed the initiative in principle, shortcomings persist notably regarding the possibility to choose English as the court language, see further in [Anwaltsblatt](#) and our previous Position Paper [1/25](#), p. 26.

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined in the introduction)

[single market relevance] Developments related to efforts to improve the efficiency of the justice system (e.g. as regards length of proceedings, to address backlogs)

5000 character(s) maximum

Any other developments related to the justice system - please specify

5000 character(s) maximum

Serious infringements of fundamental rights through security legislation

The cumulative effect of the various criminal-law and security-related data retention and disclosure measures is of particular concern, as they enable comprehensive profiling. Considered in isolation, the retention of IP address data is significantly less intrusive from a fundamental-rights perspective than comprehensive data retention

regimes covering traffic data and, in some cases, even content data. However, when IP address data are viewed in conjunction with the effects of the E-Evidence Regulation (applicable as of August 2026), under which authorities within the EU may request extensive data from service providers on a cross-border basis and in accordance with the law of the requesting State, the entire online behaviour of individuals becomes transparent, giving rise to the risk of a highly transparent citizen.

There is also a significant risk of misuse. The grounds on which service providers may refuse to comply with data requests are insufficiently robust, as already pointed out by the DAV during the legislative process leading to the adoption of the Regulation. Moreover, given the very short deadline of only eight days for the disclosure of data, there is a serious risk that requests will not be subject to thorough and effective scrutiny by the authorities in the requested state. The resulting security risks are considerable and would be further exacerbated by the newly proposed IP address retention regime in Germany, which is also likely to be proposed at EU level in the near future.

Retention of IP addresses

In December 2025 the new plans of the Federal Ministry of Justice and Consumer Protection for the establishment of IP retention were announced. The measure, which replaces the unlawful general data retention, is intended to assist law enforcement authorities in combating online crime. The DAV criticizes the plans as they also entail a form of massive data retention, see the DAV [Statement of 22 December 2025](#) and the [Position Paper 1/25](#), p. 14 on less intrusive measures as the “Quick-Freeze-Model”.

Amendments to the Federal Police Act (Bundespolizeigesetz)

In its Position Paper [50/25](#), the DAV raises serious rule-of-law concerns regarding the proposed regulation of source-based telecommunications surveillance (“*Quellen-Telekommunikationsüberwachung, TKÜ*”) in the draft Federal Police Act. The draft fails to acknowledge the true extent of the interference involved. In practice, source

telecommunications surveillance permits access to the entire data stream of an IT system, rather than merely to decrypted communications. According to the Federal Constitutional Court, the legislative assessment must be based on these actual technical capabilities. Surveillance measures of such intensity are constitutionally permissible only for the protection of particularly significant legal interests and require clear, precise and restrictive statutory thresholds—requirements that the draft fails to meet.

The draft furthermore provides inadequate protection for the core area of private life. Constitutional case law requires that all data obtained through highly intrusive surveillance measures be reviewed by an independent and neutral body prior to any use. By largely confining judicial scrutiny to doubtful cases, the proposal fails to ensure effective protection of this core area. Finally, the provision concerning “imminent danger” (*Gefahr im Verzug*) is drafted in excessively vague terms and risks becoming the rule rather than the exception. This would grant the executive excessive discretion in determining urgency and in conducting data screening itself, contrary to established constitutional standards of judicial oversight.

In a press release of December 2025 ([53/25](#)), the DAV welcomed the improved protection afforded to persons bound by professional secrecy, but expressed regret that the provisions on source-based telecommunications surveillance remain unchanged.

Mandatory Legal Representation in Police Custody Proceedings

In addition, the DAV calls for the introduction of a mandatory right to legal representation in cases of deprivation of liberty under the Federal Police Act (Bundespolizeigesetz, BPolG). Pursuant to Article 104 Para. 2 of the Basic Law (Grundgesetz), any police detention not ordered by a judge must be promptly reviewed by a court, and the police may not hold a person beyond the end of the day following apprehension without judicial authorisation. Nevertheless, the BPolG contains no provision guaranteeing legal representation in such proceedings, unlike criminal

procedure, where legal counsel is compulsory whenever a court decides on detention (§ 140 Para. 1 no. 4 of the Code of Criminal Procedure (StPO)), in accordance with Directive (EU) 2016/1919.

This discrepancy is constitutionally unjustifiable. Deprivations of liberty under police law constitute at least equally serious infringements of fundamental rights, even though those affected are often not accused of a specific criminal offence but are detained on a preventive basis. Effective access to a lawyer is essential to safeguard human dignity, prevent individuals from being reduced to mere objects of the procedure, and enable the meaningful exercise of procedural rights, as emphasised by the Federal Constitutional Court. Moreover, legal counsel contributes to more accurate fact-finding, enhances the correctness and legitimacy of judicial decisions, and strengthens public trust in the rule of law. The DAV therefore urges the legislature to amend the Federal Police Act to require the mandatory appointment of legal counsel whenever a judge decides on the admissibility or continuation of detention under police law, see Position Paper [50/25](#), p. 9.

Restriction of legal assistance in pre-removal detention cases

The DAV explicitly rejects the complete abolition of [Section 62d of the Residence Act](#) (Aufenthaltsgesetz) and emphasises the necessity of legal representation in cases involving deprivation of liberty (see the [DAV press release](#) of 5 December 2025). Pre-removal detention constitutes a particularly serious interference with fundamental rights and is governed by highly complex national and European legal frameworks. Without qualified legal representation, affected individuals are regularly unable to effectively exercise their substantive and procedural rights. Despite many years of established case law, a significant number of detention orders continue to be unlawful. Legal assistance therefore serves as an essential corrective. The DAV further challenges the legislator's argument that legal representation complicates deportations, noting that deportation figures have continued to rise despite the mandatory ex officio appointment of legal counsel under Section 62d of the Residence Act.

Need for equality of arms during mobile phone searches

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

The German Code of Criminal Procedure does not provide any clear legal conditions for access to smartphones, laptops etc. In order to guarantee the defendant an effective legal remedy and protect his or her rights, the data to be searched should be precisely specified in order to avoid excessive data collection. Clear search parameters could make the process more transparent. When reviewing the data of a mobile device, for example, the apps to be viewed, the time period to be viewed and the relevant communication parties would have to be clearly defined in advance. This would protect the defendant from excessive scrutiny of their personal data, going beyond the investigative requirement. Although the defendant has the right to apply for a court decision against the search, there is currently no standard which ensures a suspensive effect of such court proceedings for access to the data. The review should only begin after a judicial review and the defendant should have the right to be present when the data is reviewed by the investigating authorities. The defence must have early and comprehensive access to the digital evidence as well as the software tools used in order to ensure equality of arms and a fair trial.

Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2025 Report regarding the anti-corruption framework (if applicable):

5000 character(s) maximum

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

List any **changes** as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention, detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical/specialised resources as relevant), including the cooperation among domestic and with foreign authorities. Indicate any relevant measures taken to effectively and timely cooperate with OLAF and EPPO

5000 character(s) maximum

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

The DAV notes that the European Delegated Prosecutors' file management and granting of access to the file do not always meet the requirements of the German Code of Criminal Procedure, nor the rights of the accused to be protected under the case law of the ECtHR, nor the constitutionally established right of access to a complete file.

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

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

5000 character(s) maximum

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

5000 character(s) maximum

B. Prevention

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

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

5000 character(s) maximum

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

- *Such high-risk sectors could include: public procurement, including construction, transport/infrastructure, defence, cohesion, agriculture, environment, healthcare, investor residence schemes, large-scale investments of national interest and the spending of EU funds, urban planning.*
- *In particular, measures to mitigate high risks of corruption in the area of public procurement, such as enhancing transparency and oversight (for example through digital technologies) and promoting fair competition and accountability in public procurement (e.g. targeted actions to address the high share of single bids) and measures to guarantee the effective and independent functioning of the public procurement review bodies.*

5000 character(s) maximum

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[single market relevance] Measures for the prevention of corruption in relation to the issuing of official permits (e.g. related to environment, energy, service provision and various types of construction)

5000 character(s) maximum

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C. Repression

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

5000 character(s) maximum

Official data on the number of investigations, prosecutions, final judgments and the application of sanctions for corruption offences (differentiated by offence if possible).

Please indicate whether the cases: involve legal persons; are related to the implementation of EU or national funds; involve high level corruption. Please indicate which data is publicly available and how policy-making is informed by the data

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2025 Report regarding media pluralism and media freedom (if applicable)

5000 character(s) maximum

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A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

[single market relevance] Measures taken to ensure the fair and transparent allocation of state advertising

5000 character(s) maximum

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Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)

- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their financial and operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- *[single market relevance]* information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

5000 character(s) maximum

[single market relevance] Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners

5000 character(s) maximum

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

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

5000 character(s) maximum

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

5000 character(s) maximum

Access to information and public documents by public at large and journalists (incl. transparency authorities where they exist, procedures, costs/fees, timeframes,

administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

5000 character(s) maximum

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Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

5000 character(s) maximum

See our answer below ("D. Framework for Civil Society")

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

5000 character(s) maximum

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

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

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

Please provide information on measures taken to follow-up on the recommendations received in the 2025 Report regarding the system of checks and balances (if applicable)

5000 character(s) maximum

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A. The process for preparing, enacting and implementing laws

[single market relevance] Framework, policy and use of impact assessments and evidence based policy-making, stakeholders²/public consultations (including rules and practices on the transparent participation of civil society to policy development and decision-making processes), and transparency and quality of the legislative process in the preparatory, the parliamentary and implementation phase (including guidance on how to implement legislation)

5000 character(s) maximum

The German Bar Association would like to reiterate that good lawmaking requires the actual and not just „pro forma“ involvement of stakeholders. We notice that several German Ministries repeatedly set extremely short consultation deadlines. While this proceeding may have been acceptable in a very few cases in 2025 where Ministries re-proposed draft laws that the previous Government had already proposed in nearly identical way, the same does not hold for new draft laws. Unless there is need for urgency, it is unacceptable and a sign of disregard to open consultations e.g. on a Friday at lunch time until Monday morning or for merely 24 hours.

Examples:

- Draft law amending the Act on Corporate Due Diligence Obligations in Supply Chains by the Ministry for Employment and Social Affairs, sent to stakeholders on 29 August 2025, consultation deadline ending on the same day, 29 August 2025 (Friday) at close of business.
- Draft law implementing the CEAS (New Pact on Asylum and Migration) consultation deadline set by the Federal ministry of the Interior and Home Affairs beginning on 30 June 2025, ending on 8 July 2025.
- Several Draft Laws by the Ministry for Employment and Social Affairs with a consultation period of three days.

² This includes also the consultation of social partners

[single market relevance] Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

5000 character(s) maximum

[single market relevance] Safeguards to ensure legal certainty, the stability of the legal framework and non-discrimination.

5000 character(s) maximum

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

5000 character(s) maximum

Regime for constitutional review of laws

5000 character(s) maximum

B. Independent authorities

Independence, resources, capacity and powers (including effective access to relevant data) of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions (Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

5000 character(s) maximum

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

5000 character(s) maximum

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[single market relevance] Safeguards to ensure the effective independence of supervisory and regulatory authorities with a direct impact on economic operators such as national economic oversight, enforcement and competition authorities

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C. Accessibility and judicial review of administrative decisions

[single market relevance] Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and respect of the good administration principle (including the obligation of the administration to give reasons for decisions)

5000 character(s) maximum

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[single market relevance] Judicial review of administrative decisions: short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

5000 character(s) maximum

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[single market relevance] Safeguards (other than judicial review) regarding decisions or inaction of administrative authorities, including remedies (e.g. administrative review)

5000 character(s) maximum

Need for a further reform of the Act on International Mutual Assistance in Criminal matters
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The DAV commented on the need to provide for legal remedies against decisions on admissibility and decision on extradition detention in extradition law in its Position Paper [72/2025](#) on the [Draft reform](#) of the Act on International Mutual Assistance in Criminal Matters (IRG) which the Federal Secretary of State of Justice proposed in late September 2025. A new draft has been presented by the current government, but this new draft does not provide for the requested remedies.

The DAV refers to its previous position paper [80/2024](#) and continues to call for the creation of an appeal against extradition detention and against the decision to extradite, as up to date no legal remedies exist for either one. While the only option is to directly launch a constitutional complaint, coupled with a request for interim relief, invoking fundamental and human rights, to the Federal Constitutional Court, this complaint and request do not suspend the enforcement of the extradition decision (see as an illustrating example the recent case of the German Constitutional Court Bundesverfassungsgericht of 28 June 2024 - 2 BvQ 4/24 regarding a non-binary person who was extradited to Hungary despite a pending constitutional court complaint). The current legal situation does not appear to be compatible with the human right to effective legal protection (Article 19 Para. 4 of the Grundgesetz, Article 13 of the ECHR, Article 47 of the Charter of Fundamental Rights of the European Union).

Enforcement of administrative judgments against public authorities

In the opinion of the DAV, more effective means of enforcing administrative court judgments against public authorities are needed than are currently available. Several examples have shown that administrative court judgments are not effectively enforced (eg. the non-implemented diesel driving bans following a ruling by the BayVGH (Az.: 22 C 18.1718; CJUE judgment of 19 December 2019, C-752/18); the current rules only provide for the determination and the execution of coercive fines. This is not sufficient; a new legislative proposal providing for additions and clarifications and following-up on the previous draft law ([BT-Drs 20/2533](#)) has not yet been introduced by the new government.

Violation of the rights of applicants for the Federal admission programme Afghanistan

The DAV criticises the federal government's handling of promises made to Afghan former local staff and their families to grant them asylum in Germany. The government has, on the one hand, unilaterally revoked commitments it had previously made and, on the other, attempted to induce applicants to give up their admission promises by offering financial incentives.

The DAV is of the opinion that an admission promise is not a political pledge but legally binding; the federal government must honour these promises and expedite the procedures for security checks and visa issuance. The DAV also criticises strategies aimed at "backing out of the promises" – such as offers to forego entry in exchange for money – as a "trade of money for lives," and instead calls for resources to be allocated to the fulfilment of the promises to issue visas and evacuate those who had advocated for human rights, democracy, and the rule of law immediately.

Courts also consider the admission promises issued to be binding and sanction the German government for inaction. For further information please find a Statement of the DAV on 18 November 2025 [here](#), more information on the admission programme can be found [here](#) (in German).

[single market relevance] Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)
5000 character(s) maximum

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

5000 character(s) maximum

Oversight, including by courts, of the use of intrusive surveillance software by national authorities

5000 character(s) maximum

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration, transparency and dissolution rules)

5000 character(s) maximum

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures to protect them from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services, as well as available remedies

5000 character(s) maximum

The German Federal Government published a draft law on SLAPPs which has been adopted by the Federal cabinet in December 2025 and is aimed at implementing directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (see [press release](#)).

The German Bar Association has commented on the draft law introduced by the Federal Ministry of Justice, see Position Paper [44/25](#) (in German). While welcoming the objective of the Directive and the draft implementing law, the DAV calls for greater legal clarity in the individual provisions to ensure that the new framework enables the swift and unambiguous identification of a lawsuit as a 'SLAPP' case. Most important is preventing an overly extensive interpretation.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

5000 character(s) maximum

E. Initiatives to foster a rule of law culture

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

5000 character(s) maximum

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

5000 character(s) maximum

Cross-pillar elements: cross-border rule of law issues related to the Single Market

If there are any significant challenges concerning the Single Market you have been facing in a cross-border context relating to any of the four pillars of the report, including for example issues with market access and the conditions for economic activities, that you would like to highlight, please do so here.

Given the cross-cutting nature of this question, it is included as a separate section in the questionnaire. Information collected under this question will however be integrated under the relevant existing pillar(s) of the Report.

5000 character(s) maximum

Supporting document upload

If you would like to submit any supporting document(s) to your contribution, please upload your file(s) here.

Mailing List

Germany

Bundeskanzleramt

Auswärtiges Amt

Bundesministerium der Justiz und für Verbraucherschutz

Bundesministerium des Innern und für Heimat

Europe

European Parliament

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

European Commission

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

Permanent Representation of the Federal Republic of Germany to the EU

Judicial officers of the representations of the Federal States to the EU

("Landesvertretungen bei der EU")

Council of Bars and Law Societies of Europe (CCBE)