



Council of the  
European Union

Brussels, 11 July 2023  
(OR. en)

11327/23  
ADD 5

JAI 956  
FREMP 207  
AG 71  
POLGEN 89

## COVER NOTE

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 6 July 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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No. Cion doc.: SWD(2023) 805 final

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Subject: COMMISSION STAFF WORKING DOCUMENT 2023 Rule of Law Report Country Chapter on the rule of law situation in Germany Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2023 Rule of Law Report The rule of law situation in the European Union

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Delegations will find attached document SWD(2023) 805 final.

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Encl.: SWD(2023) 805 final



Brussels, 5.7.2023  
SWD(2023) 805 final

## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Germany**

*Accompanying the document*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

{COM(2023) 800 final} - {SWD(2023) 801 final} - {SWD(2023) 802 final} -  
{SWD(2023) 803 final} - {SWD(2023) 804 final} - {SWD(2023) 806 final} -  
{SWD(2023) 807 final} - {SWD(2023) 808 final} - {SWD(2023) 809 final} -  
{SWD(2023) 810 final} - {SWD(2023) 811 final} - {SWD(2023) 812 final} -  
{SWD(2023) 813 final} - {SWD(2023) 814 final} - {SWD(2023) 815 final} -  
{SWD(2023) 816 final} - {SWD(2023) 817 final} - {SWD(2023) 818 final} -  
{SWD(2023) 819 final} - {SWD(2023) 820 final} - {SWD(2023) 821 final} -  
{SWD(2023) 822 final} - {SWD(2023) 823 final} - {SWD(2023) 824 final} -  
{SWD(2023) 825 final} - {SWD(2023) 826 final} - {SWD(2023) 827 final}

## ABSTRACT

The German justice system continues to perform efficiently and benefits from a very high level of perceived judicial independence among the general public. The Pact for the Rule of Law was not prolonged and no further steps were taken on the federal level to continue to ensure adequate resources for the judiciary and in relation to the level of salary of judges. This remains a challenge, also with a substantial number of retirements of judges in the next few years. Targeted amendments to regulations of judges' status related to constitutional values are being discussed. There have been no steps taken so far to follow-up on the announcement to reform the right of Ministers of Justice to issue individual instructions to prosecutors. A new digital initiative provides federal funding for digitalisation projects. A revised proposal to introduce digital documentation of main proceedings in criminal cases through audio recordings has been submitted to Parliament, following mixed reactions to the first draft.

The update of Germany's strategic anti-corruption framework for the federal administration remains pending. A number of reforms set out in the Government's coalition agreement are still outstanding, including the revision of political party financing rules. A lobby register is in place, while work to establish a legislative footprint is ongoing. Shortcomings remain in the regulation of asset disclosures for parliamentarians and Government officials and with regard to fragmented and inconsistent post-employment rules and cooling-off periods but some initiative is taken to prepare new preventative guidelines. New whistleblower protection legislation has been adopted in May 2023. A revision of administrative offences was announced to strengthen the liability of and sanctions for companies for criminal offences to fight foreign bribery more effectively. A recent ruling highlighted the scope of the offence of trading in influence by members of Parliament. Overall, the financial damage caused by corruption decreased, while the number of investigations into corruption rose significantly compared to the previous year reported. High-level corruption is addressed, without any identifiable systemic weaknesses.

Media pluralism and freedom in Germany are ensured by strong legal and institutional safeguards, with a high degree of independence of the state media authorities and public service broadcasters. Amendments to the State Media Treaty concerning the remit of the public service broadcasters have been agreed. Following a scandal concerning one of the regional public service broadcasters, further changes to the State Media Treaty to improve compliance and control mechanisms are currently being prepared. The Federal Government maintains its plan to establish in law the right to information of the press as regards federal authorities and has started internal preparations. Authorities and journalist representatives continue to take steps to address concerns related to physical aggressions against journalists, notably when covering protests.

Civil society space continues to be considered 'open' and a draft 'democracy promotion' law aims to provide long-term federal funding to civil society projects on democracy, pluralism and political education. Some improvements regarding stakeholder involvement can be noted, while the commitment to introduce a digital law-making proposal remains pending. The National Institute of Human Rights is preparing a follow-up to the recommendations by the Global Alliance of National Human Rights Institutions ahead of its re-accreditation in

October 2023. The Government intends to come with a proposal for legislation to clarify the tax-exempt status of non-profit organisations, but no concrete steps have been taken.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Germany has made:

- No further progress on continuing efforts to provide adequate resources for the justice system as part of the new Pact for 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.
- Some progress on proceeding 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.
- Some progress on strengthening 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
- Some progress on taking 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
- No progress yet on taking 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

On this basis, and considering other developments that took place in the period of reference, it is recommended to Germany to:

- Step up efforts to ensure adequate resources for the justice system, including on the level of remuneration for judges, taking into account European standards on resources and remuneration for the justice system.
- Continue efforts 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.
- Advance with 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 official 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*<sup>1</sup>. 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<sup>2</sup> 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<sup>3</sup>. 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*<sup>4</sup>. 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<sup>5</sup>, 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 high among companies.** Overall, 77% of the general population and 71% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>6</sup>. According to data in the 2023 EU Justice Scoreboard, the level remains consistently high for both the general public and companies since 2016. The perceived level of judicial independence among the general public has increased in

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

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

<sup>6</sup> Figures 49 and 51, 2023 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%).

comparison with 2022 (76%), as well as with 2016 (69%). It has decreased among companies in comparison with 2022 (77%) as well as with 2016 (73%).

**There have been no steps taken so far regarding the announced reform on the power of Ministers of Justice to give instructions to prosecutors in individual cases.** As noted in the 2022 Rule of Law Report<sup>7</sup>, the coalition agreement includes an intention to reform the ministerial right to instruct prosecutors in individual cases in view of the requirements of the case law of the Court of Justice of the European Union<sup>8</sup>. However, no concrete steps have been taken at this stage and no timeline for the reform has been announced<sup>9</sup>. Views on the need for such a reform have been divided among the *Länder* as well as stakeholders<sup>10</sup>. 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<sup>11</sup>.

**Targeted amendments to the regulations of the status of judges related to constitutional values are being discussed at both federal level and in the *Länder*.** As noted in the 2022 Rule of Law Report<sup>12</sup>, most *Länder* only foresee checks by the national security agency of candidates for judicial appointments upon explicit request of the appointing authority, but in two of them standard security checks before judicial appointments take place<sup>13</sup>. In Bremen, amendments to the Judges' law were adopted in February 2023 that foresee that security checks can be requested by the recruiting authority based on concrete suspicions<sup>14</sup>. In Brandenburg, draft legislation to introduce regular security checks remains under discussion in Parliament<sup>15</sup> and in Niedersachsen, the Ministry of Justice is reviewing the possibility to introduce further measures to check the adherence of candidates to constitutional values<sup>16</sup>. Generally, the aim is to ensure that judges respect the principle of constitutional loyalty before their appointment<sup>17</sup>. Furthermore, a discussion on how to deal with cases where judges

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<sup>7</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 4-5.

<sup>8</sup> To be noted that the relevant case law of the European Court of Justice 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.

<sup>9</sup> Written contribution from the Ministry of Justice in the context of the country visit to Germany.

<sup>10</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 5.

<sup>11</sup> 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.

<sup>12</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 5-6.

<sup>13</sup> Bavaria and Mecklenburg-Vorpommern. See Figure 56, 2022 EU Justice Scoreboard. According to European standards, 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. Venice Commission opinion (CDL-AD(2021)046), para. 16. In other *Länder* measures such as providing a criminal record certificate, filling in a questionnaire or making a formal declaration of constitutional allegiance exist. Written contribution from the EU Affairs Committee of the Conference of Justice Ministers in the context of the country visit to Germany.

<sup>14</sup> Revision of the Judges' Law of Bremen.

<sup>15</sup> Draft law to improve the protection of professional civil service in Brandenburg against opponents of the Constitution.

<sup>16</sup> German Judges' Magazine (2/23), No Chance for Extremists, pp. 52-55; Information received from the EU Affairs Committee of the Conference of the Justice Ministers in the context of the country visit to Germany.

<sup>17</sup> 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.

return to office after having exercised a political office where they expressed views in opposition to constitutional values has emerged over the past year<sup>18</sup>. In November 2022, the Conference of the Justice Ministers of the *Länder* proposed certain steps to increase the effectiveness of disciplinary measures in case of extremist statements<sup>19</sup>. While stakeholders do not object to such measures, they generally consider that existing disciplinary rules are sufficient to handle such cases<sup>20</sup>. On 8 January 2023, the Ministry of Justice also presented draft legislation to explicitly provide that lay judges<sup>21</sup> are required to respect constitutional values, making the non-respect a mandatory ground for exclusion<sup>22</sup>. This principle already emanates from the Constitution and the case law of the Constitutional Court<sup>23</sup>. Following a stakeholder consultation until 22 February 2023, the Ministry aims to present a proposal to Parliament in spring, with adoption intended for summer or fall 2023<sup>24</sup>.

**Several *Länder* are undertaking reforms to create a specific legal basis for the evaluation of judges.** In a judgment of 7 July 2021<sup>25</sup>, the Federal Administrative Court decided that key elements of the professional evaluation of civil servants (including judges) must be regulated by law and cannot be set out solely in administrative rules due to their importance for selection decisions<sup>26</sup>. To implement this judgment, Nordrhein-Westfalen has adopted decrees on 1 January 2023 setting out the basis for the evaluation system of judges and prosecutors<sup>27</sup>. Other *Länder* have either already adapted their legislation<sup>28</sup>, are currently preparing legislative amendments<sup>29</sup> or consider their legislation to be already in line<sup>30</sup> with the case law of the Federal Administrative Court<sup>31</sup>.

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<sup>18</sup> German Judges' Magazine (2/23), No Chance for Extremists, pp. 52-55. Amendments to federal disciplinary legislation for civil servants to speed-up decision-making have been proposed in December 2022, but do not cover judges. Draft law to accelerate Act to Accelerate Disciplinary Procedures in the Federal Administration.

<sup>19</sup> In particular concerning time limits applicable for certain disciplinary sanctions. Conference of the Justice Ministers (2022), Decisive Action against Extremists in Civil Service.

<sup>20</sup> Contribution from the German Bar Association for the 2023 Rule of Law Report, p. 11. Statement by the German Association of Judges of 9 February 2022, 'Make use of all legal means in case Maier'. Information received from the German Association of Judges and the German Bar Association in the context of the country visit to Germany.

<sup>21</sup> Lay judges include lay judges in criminal cases (*Schöffen*), commercial judges (*Handelsrichter*) in commercial chambers and other voluntary judges in specialised jurisdictions. §45a, German Judges Law.

<sup>22</sup> Draft for a sixth law to amend the German Judges Law.

<sup>23</sup> While most stakeholders consider that in this light, legislation does not appear strictly necessary, they broadly welcome the objectives of the law. See contributions from the Association of Lay Judges and the German Association of Judges to the stakeholder consultation on the draft law.

<sup>24</sup> Information received from the Ministry of Justice in the context of the country visit to Germany.

<sup>25</sup> Judgment of the German Federal Administrative Court of 7 July 2021, 2 C 2/21.

<sup>26</sup> This includes the evaluation system (periodic or only occasion-based) and the requirement for final conclusions to be based on all individual elements. However, the legislator can empower the executive to regulate further matters (e.g. rhythm of evaluations or content of individual elements to evaluate), by decree.

<sup>27</sup> Input from Germany for the 2023 Rule of Law Report, p. 4.

<sup>28</sup> Baden-Württemberg, Berlin, Brandenburg, Sachsen-Anhalt.

<sup>29</sup> Hessen, Mecklenburg-Vorpommern, Niedersachsen, Sachsen.

<sup>30</sup> Bayern, Hamburg.

<sup>31</sup> Written contribution from the EU Affairs Committee of the Conference of Justice Ministers in the context of the country visit.



## Quality

**There has been no further progress to continue efforts to provide adequate resources for the justice system, including on judicial salaries.** The 2022 Rule of Law Report 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”<sup>32</sup>. While the coalition agreement included a commitment to continue the 2019 ‘Pact for the rule of law’<sup>33</sup>, which had provided federal funding in return for the *Länder* creating 2 000 posts for judges and prosecutors<sup>34</sup>, no follow-up has been given to this. The Ministry of Justice will only provide federal funding for digitalisation projects<sup>35</sup>. The Conference of the Justice Ministers of the *Länder*, on 10 November 2022<sup>36</sup>, has strongly called on the Federal Government to continue the Pact, requesting to maintain at least the equivalent of the previous funding (EUR 220 million), to be paid out between 2023-27. The *Länder* and stakeholders<sup>37</sup> continue to identify significant needs for additional human resources, also due to additional tasks stemming from federal legislation<sup>38</sup>. In the meantime, in their budgets for 2023-2024, a number of *Länder* have included new posts for judges and prosecutors<sup>39</sup>. According to a survey conducted among judges and prosecutors in 2022, 88% consider it very important that the Federal Government continues the Pact for the Rule of Law, while 78% of judges and 92% of prosecutors consider the human resources available to be insufficient<sup>40</sup>. In addition, the level of salaries in the judiciary as compared to the gross average salary remains notably low<sup>41</sup> and varies significantly between the *Länder*<sup>42</sup>. This, together with the expected retirements of around 10 000 judges by 2030, constitutes a challenge for recruitments in the judiciary<sup>43</sup>. The Constitutional Court has repeatedly delivered rulings related to the adequacy of judicial salaries<sup>44</sup>, with at least one further case

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<sup>32</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 2.

<sup>33</sup> Coalition Agreement 2021-2025, p. 105.

<sup>34</sup> By 31 December 2021, the *Länder* created and filled over 2 700 posts and also created 3 800 posts for non-judicial staff. Input from Germany for the 2023 Rule of Law Report, p. 4. Joint Report by the Federal Government and the *Länder* on the implementation of the measures for the Pact for the rule of law.

<sup>35</sup> The Federal Government in this context cites the constitutional framework the division of competences between Federal and *Länder* level regarding the administration of justice for not being able to provide financial support to the *Länder* Information received from the Ministry of Justice in the context of the country visit to Germany. However, this position is not shared by the *Länder* and the previous Pact for the Rule of Law was agreed under the same constitutional framework.

<sup>36</sup> Decision of the Conference of Justice Ministers, 10 November 2022, Strengthening of the rule of law as joint tasks – consolidation of the pact for the rule of law and new digital pact for the judiciary.

<sup>37</sup> Contributions from the German Association of Judges, the German Federal Bar, the German Bar Association and Civil Liberties Union for Europe (Germany) for the 2023 Rule of Law Report.

<sup>38</sup> Including around 1 000 new posts for judges and prosecutors for criminal cases. Statement by the German Association of Judges, 14 January 2023, German Association of Judges recalls responsibility of the Government coalition.

<sup>39</sup> Written contribution from the EU Affairs Committee of the Conference of Justice Ministers in the context of the country visit to Germany.

<sup>40</sup> Roland Rechtsreport 2023, p. 38 and 40. The survey was conducted among 803 judges and prosecutors.

<sup>41</sup> Figure 34, 2023 EU Justice Scoreboard.

<sup>42</sup> Entry-level salaries can differ by up to 13% between the *Länder*. Latest data as of 31 December 2022 provided by the German Association of Judges, Sample cases judicial salaries Germany.

<sup>43</sup> Statement by the German Association of Judges, 14 January 2023, German Association of Judges recalls responsibility of the Government coalition. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, pp. 6-7.

<sup>44</sup> Written contribution from the Constitutional Court in the context of the country visit to Germany.

pending<sup>45</sup>. The *Länder*<sup>46</sup> report that salaries have been raised by 2.8% on average in nine *Länder* in either 2021 or 2022 to be in line with the results of the general collective bargaining for the civil service<sup>47</sup>. In addition, in some *Länder* child-related parts of the family bonus have been raised in response to the case law of the Constitutional Court<sup>48</sup>. 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<sup>49</sup>. As no concrete steps have been taken to continue to ensure adequate resources, no further progress has been made on the implementation of the recommendation in the 2022 Rule of Law Report.

**A new digital initiative provides federal funding for digitalisation projects, and a governmental draft for amendments on the use of videoconferencing in civil and specialised courts has been submitted to Parliament.** The level of digitalisation of justice in Germany is overall very good, notably with regard to arrangements for machine-readable judicial decisions<sup>50</sup> or digital solutions to initiate and follow proceedings in civil/commercial and administrative cases<sup>51</sup>. However, gaps remain regarding the publication of judgments online<sup>52</sup>. In the framework of a new digital initiative, the Federal Government will provide up to EUR 200 million for the period 2023-2026 to finance joint projects of the *Länder* and the Federal Ministry of Justice on digitalisation of justice<sup>53</sup>. However, the *Länder* unanimously consider this amount as insufficient to tackle the challenges of digitalisation of justice<sup>54</sup>. In the meantime, the progressive rollout<sup>55</sup> of the electronic file for courts and public prosecutors, due by 1 January 2026, continues<sup>56</sup>. In addition, the Federal Ministry of Justice is pursuing

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<sup>45</sup> Case 2 BvL 2/16, 2 BvL 3/16, 2 BvL 4/16, 2 BvL 5/16, 2 BvL 6/16 (a referral by the Administrative Court of Bremen regarding the constitutionality of provisions related to the level of the salary of judges in the legislation of the Land of Bremen). Input from Germany for the 2023 Rule of Law Report, p. 2.

<sup>46</sup> Competence for judicial salaries (except for judges at the Federal courts) lies with the *Länder*.

<sup>47</sup> Written contribution from the EU Affairs Committee of the Justice Ministers Conference in the context of the country visit to Germany.

<sup>48</sup> Input from Germany for the 2023 Rule of Law Report, p. 2. The Association of Judges has noted that bonuses related to family status or place of residence/work of a judge should not replace measures related to the adequacy of base salaries. German Association of Judges, 10 Principles for a new approach to judicial salaries. The Association of Judges has also criticised the recent legislative proposal to adjust salaries of Federal judges, considering that it does not fulfilling the requirements of the Constitutional Court's case law. German Association of Judges, response to the consultation on the draft for a federal salary and pension adequacy law.

<sup>49</sup> 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 CM/Rec(2010)12, para. 33.

<sup>50</sup> Figure 48, 2023 EU Justice Scoreboard.

<sup>51</sup> Figure 45, 2023 EU Justice Scoreboard.

<sup>52</sup> Figure 47, 2023 EU Justice Scoreboard.

<sup>53</sup> Input from Germany for the 2023 Rule of Law Report, p. 2 and 6.

<sup>54</sup> The *Länder* have called for further structural funding for judicial digitalisation. In addition to project funding, they consider that the Federal Government ought to provide an annual structural funding of EUR 350 million until 2025. Conference of the Justice Ministers (2022) Strengthening the Rule of Law as a Joint Task - Continuation of the Pact for the Rule of Law and New Digital Pact for the Judiciary.

<sup>55</sup> The electronic submission of applications to the courts (save for the Federal Constitutional Court) is already mandatory for lawyers, public authorities and legal persons falling under public law. While the German Bar Association notes that this has been generally successful, not all courts yet have an internal electronic file system, which can give rise to additional processing steps or issues in transmitting certain documents to the courts. Contribution from the German Bar Association for the 2023 Rule of Law Report, p. 14.

<sup>56</sup> The *Länder* are developing and coordinating three projects of the electronic file (eAS, eIP and e<sup>2</sup>A). The transition of all courts to the e-file is implemented gradually via pilot projects. The *Länder* have first piloted

projects for electronic submission of applications to courts<sup>57</sup> and an online procedure providing easier and less costly access to courts, based entirely on electronic communication<sup>58</sup>. In November 2022, the Federal Government presented a draft proposal<sup>59</sup> on videoconferencing in civil and specialised courts. The draft has been in general welcomed by stakeholders, even if views diverge as to the circumstances in which the means of videoconference should be used in court<sup>60</sup>. On 26 May 2023, the Federal Government submitted a revised proposal to the Federal Council<sup>61</sup>. The amended draft foresees a general obligation to hold hearings in these courts by means of videoconference if ordered by the judge or the possibility to do so if requested by all party representatives. Pursuant to the draft the court shall not only be able to permit a video hearing, but also to order it with the possibility of the addressee to object to such order. In case all counsels in a proceeding apply for a video hearing, the court shall in general order such video hearing and may only reject it in exceptional cases.

**Following mixed stakeholder reactions, a revised draft proposal for a law aiming to introduce digital documentation of main proceedings in criminal cases has been submitted by the Government to the Federal Council.** On 22 November 2022, the Ministry of Justice presented for consultation a draft legislative proposal to introduce digital documentation of main proceedings in criminal cases, initially through audio and video recording, with the audio recording to be transformed into a written protocol through a transcription software<sup>62</sup>. Currently, for such proceedings at regional and higher regional courts, only a formal protocol is prepared, with the procedural steps but not the content or interventions, meaning that judges, prosecutors and lawyers take their own notes<sup>63</sup>. The transcript would only be a support tool, not replacing the status of the formal protocol, and would not create new grounds for appeal. The Bar and associations of lawyers have welcomed it<sup>64</sup>, as it responds to long-standing demands, and they consider it will ensure accurate and objective documentation of proceedings and reduce the potential of conflicting

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the electronic file in civil and family cases and are now moving in there towards regular operation. In some Länder, the roll-out in the specialised (labour, social, administrative and financial) courts is ongoing or has been already completed. All Länder expect to have fully implemented the electronic file by 1 January 2026.

<sup>57</sup> It is envisaged to offer a first version with a single type of application to be submitted to the courts and to find administrative courts for the pilot stage still in 2023. In its final stage, a range of different applications should be possible to be submitted via a dedicated portal. Information received from the Ministry of Justice in the context of the country visit. The possibility to allow greater access to justice by adjusting procedural rules to submit applications digitally has been endorsed by the Länder. Conference of the Justice Ministers (2022) Reducing access barriers by enabling electronic submission of applications.

<sup>58</sup> This project is presently still at inception phase. Input from Germany for the 2023 Rule of Law Report, p. 7 and information received from the Ministry of Justice during the country visit.

<sup>59</sup> Draft proposal to promote the use of video conferencing technology in civil and specialized jurisdictions.

<sup>60</sup> The German Judges' Association generally supports the draft law but rejects the possibility of being obliged to hold court proceedings by videoconference. Position paper by the German Association of Judges on the draft law on videoconferencing. The German Federal Bar considers that hearings of witnesses, experts and/or parties ought to take place in presence, unless the parties agree to hearing by videoconference; it also objects to the possibility of videoconferences ex officio. German Federal Bar, Position paper on the draft law on videoconferencing.

<sup>61</sup> Ministry of Justice (2023), Law to promote videoconferencing in civil and specialised courts.

<sup>62</sup> Draft law for the digital documentation of the main criminal hearings.

<sup>63</sup> See the explanatory memorandum of the draft law; information provided by the Ministry of Justice in the context of the Country visit to Germany.

<sup>64</sup> See i.a. contributions to the public consultation on the draft law by the German Federal Bar, the German Bar Association and the Association of Criminal Lawyers.

interpretations. However, Judges' and Prosecutors' Associations criticised the proposal, particularly the use of video recordings, voicing concerns over the impact on victims' willingness to provide testimony, insufficient protection of personal rights and risks of leaks<sup>65</sup>. On the side of the *Länder*, concerns have also been raised, including technical challenges and costs of the reform<sup>66</sup>. Before preparing the draft proposal, the Ministry of Justice had set up an expert group, which had concluded with a preference for audio recording with automatic transcript over video<sup>67</sup>. Following the mixed reactions to the draft, on 10 May 2023 the Government presented an amended proposal which now limits the digital documentation to an audio recording. The possibility to also require a video recording is left open to the *Länder*<sup>68</sup>. The proposal has been submitted to the Federal Council; if adopted, the documentation would be introduced in a pilot phase as of 2026 and only fully enter into force in 2030<sup>69</sup>.

## Efficiency

**The justice system overall continues to perform efficiently.** The efficiency in administrative cases at first instance appears to have stabilised, with the disposition time slightly decreasing in 2021 (from 426 days in 2020 to 422 days in 2021) and the high clearance rate remaining stable (at 110% in 2020 and 109.9 % in 2021)<sup>70</sup>. However, the overall number of pending administrative cases in 2021 remains unchanged compared to 2020 and is relatively high at 0.9 per 100 inhabitants<sup>71</sup>. The performance indicators on civil and commercial litigious cases have improved from 98.1% in 2020 to 105.1% in 2021<sup>72</sup>. After the steady increase of the length of proceedings in such cases from 2012 to 2020, the disposition time has slightly decreased in 2021 and is at 231 days<sup>73</sup>, while the number of incoming cases has continued a decreasing trend<sup>74</sup>. To address the challenges posed by the phenomenon of 'mass' civil court cases, a working group examined a possibility of a preliminary ruling procedure that would allow dealing with these cases more efficiently<sup>75</sup> and in June the Ministry of Justice presented a draft for such a procedure with the Federal Court

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<sup>65</sup> See i.a. contribution to the public consultation on the draft law by the German Association of Judges.

<sup>66</sup> Information received in the context of the country visit to Germany from the EU Affairs Committee of the Justice Ministers Conference.

<sup>67</sup> Ministry of Justice, Report of the expert group on documentation in main proceedings of criminal cases.

<sup>68</sup> This can also be limited to certain types of courts or proceedings. Draft Law of the Federal Government for a law for the digital documentation of the main criminal hearings.

<sup>69</sup> Explanatory memorandum of the draft law for the digital documentation of the main criminal hearings.

<sup>70</sup> Figures 8 and 12, 2023 EU Justice Scoreboard. As noted in the 2022 Rule of Law Report, in 2021, there was a significant increase of cases in relation to COVID-19 restrictions in administrative courts. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 8. Data for 2022 indicates that these cases significantly decreased compared to 2021. See for example Higher Administrative Court of North-Rhine Westphalia (2022), Annual Report, p. 16.

<sup>71</sup> Figure 15, 2023 EU Justice Scoreboard.

<sup>72</sup> Figure 11, 2023 EU Justice Scoreboard.

<sup>73</sup> Figure 6, 2023 EU Justice Scoreboard.

<sup>74</sup> Figure 3, 2023 EU Justice Scoreboard. According to a study by the Ministry of Justice, among the main reasons for the observed decline are an increased interest in preventive and consensual conflict resolution for business activities and private contacts, perception of legal procedures as being stressful, uneconomical and time-consuming leading to a greater use of legal tech providers, or attorneys more frequently advising against going to court and narrower legal assistance coverage by insurance companies. Ministry of Justice (2023) Decline in civil court filings: Research report handed over to the Federal Ministry of Justice.

<sup>75</sup> Written contribution received in the context of the country visit to Germany from the EU Affairs Committee of the Justice Ministers Conference.

of Justice<sup>76</sup>. As noted in the 2022 Rule of Law Report, the ‘mass’ civil court cases present serious challenges for judges to ensure handling of cases within adequate timeframes<sup>77</sup>.

## 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 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<sup>78</sup> 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 2022 Corruption Perceptions Index by Transparency International, Germany scores 79/100 and ranks 5<sup>th</sup> in the European Union and 9<sup>th</sup> globally<sup>79</sup>. This perception has been relatively stable over the past five years.<sup>80</sup> The 2023 Special Eurobarometer on Corruption shows that 57% of respondents consider corruption widespread in their country (EU average 70%) and 7% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>81</sup>. As regards businesses, 47% of companies consider that corruption is widespread (EU average 65%) and 14% consider that corruption is a problem when doing business (EU average 35%)<sup>82</sup>. Furthermore, 30% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>83</sup>, while 33% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>84</sup>.

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<sup>76</sup> Ministry of Justice (2023) Law on the introduction of a preliminary ruling procedure at the Federal Court of Justice.

<sup>77</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 9.

<sup>78</sup> 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.

<sup>79</sup> Transparency International (2023), Corruption Perceptions Index 2022. 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).

<sup>80</sup> In 2018, the score was 80, while, in 2022, the score is 79. 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.

<sup>81</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens’ corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>82</sup> Flash Eurobarometer 524 on Businesses’ attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>83</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>84</sup> Flash Eurobarometer 524 on Businesses’ attitudes towards corruption in the EU (2023).

**The update of Germany’s strategic anti-corruption framework at the federal level and revision of its rules on gifts remain pending<sup>85</sup>.** The revision of the 2003 ‘Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration’, which sets out key elements of the federal administration’s corruption prevention strategy<sup>86</sup>, led by the Ministry of Interior, was originally expected to be finalised by the end of 2022<sup>87</sup>, but has seen delays. While there is no concrete timeline, a possible conclusion has been set by the end of 2023<sup>88</sup>. Germany has been encouraged during the UN Convention against Corruption (UNCAC) review to seek, where appropriate, input from stakeholders outside of the public sector<sup>89</sup>, which has not been sought yet. The still ongoing revision of the 2004 rules on the prohibition to accept favours and gifts, with an aim to assess whether more up-to-date, harmonised rules and increased legal certainty would be required, is also taking longer than initially planned and is expected to be finalised in the second half of 2023<sup>90</sup>. The publication of the next comprehensive compilation report on integrity in the federal public administration of 2022 is planned for the end of 2023, including, among others, specific data on corruption cases and suspicion of corruption in the federal public administration<sup>91</sup>.

**There are plans to further strengthen the legal framework for corruption, as envisaged in the Government’s coalition agreement, which for now are at an initial stage.**

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<sup>85</sup> 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10 (for 2022) and p. 7 (for 2021).

<sup>86</sup> It applies to all categories of federal employees, authorities and offices, the supreme federal authorities, the military and state-owned enterprises. 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 to the prevention of corruption. Stakeholders consider the system for the monitoring of the directive to be well-functioning, information received from LobbyControl in the context of the country visit to Germany. According to information received from the Ministry of Interior in the context of the country visit, the update is not envisaged to be a complete overhaul but rather of editorial nature to modernise the directive. GRECO considers the directive to be a solid framework, see GRECO, Fifth Evaluation Round, Evaluation Report Germany (2019), p. 4.

<sup>87</sup> Information received from the Ministry of Interior in the context of the country visit to Germany in 2022. 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. Notably, the OECD and GRECO have commended Germany’s system of contact persons for the prevention of corruption and have recommended this practice to other OECD member states. See Ministry of Interior (2021), Integrity in the public administration – Annual Report 2020, p. 58, 3. GRECO, Fifth Evaluation Round, Evaluation Report Germany (2019), p. 4.

<sup>88</sup> There is no concrete timeline in place, however the finalisation of the update is expected by the end of 2023, according to information received from the Ministry of Interior in the context of the country visit.

<sup>89</sup> United Nations Convention against Corruption Country Review Report of Germany for the Review Cycle 2016-2021 (2020), p. 30. Germany was originally criticised by the UN not to have assessed the impact of its corruption prevention strategy, especially in fields of work prone to corruption and recommends revisions of the directive, see UNCAC, Executive Summary, p. 3.

<sup>90</sup> Information received from the Ministry of Interior in the context of the country visit to Germany, noting that thematically the rules are envisaged to be significantly more comprehensive, including concrete examples that aim at informing public officials. See also 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10 (for 2022) and p. 7 (for 2021).

<sup>91</sup> The first comprehensive 2020 compilation report on integrity in the federal public administration was published in spring 2022, see Ministry of Interior (2021), Integrity in the public administration – Annual Report 2020. The report consists of three elements that were last year for the first time combined in one comprehensive report, including the yearly Anti-Corruption Report, the report on the federal public administration and the report of the use of external staff in the public administration.

Corruption is already broadly criminalised in Germany<sup>92</sup>. As noted in the 2022 Rule of Law Report, the Government's coalition agreement included, in addition, reform plans to make the criminal offence for bribery involving members of Parliament (MPs) more effective<sup>93</sup>. At the moment, unethical commercial conduct<sup>94</sup> by exerting their influence outside of their official activities in Parliament – such as acting as brokers for Government COVID-19 mask deals while receiving personal financial benefits in the form of high commission payments – remains outside of the scope of the criminal code, as recently confirmed by the Federal Court of Justice<sup>95</sup>. Combined with insufficient regulation of parliamentarians' secondary activities, this leaves room for concern<sup>96</sup>. While Germany has recently taken an overall approach of minimisation of criminal provisions where they appear outdated or disproportionate<sup>97</sup>, legislative amendments to address this gap regarding members of Parliament are expected for the end of 2023<sup>98</sup>. The Minister of Justice plans to provide for precisions in the Code of Administrative Offences, including an adaptation of the level of sanctions for corporate companies<sup>99</sup>, and does not plan to propose another comprehensive legislative reform<sup>100</sup>.

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<sup>92</sup> 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 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).

<sup>93</sup> Section 108(e) of the Criminal Code. Apart from imprisonment of up to ten years for bribery involving a member of the Parliament, a court may also deprive a person of their ability to acquire rights from public elections and the right to be elected or vote in public matters.

<sup>94</sup> Other than for public officials, commercial conduct of members of the Parliament is not prohibited in Germany.

<sup>95</sup> Bundesgerichtshof, Beschluss vom 5 Juli 2022, StB 7-9/22. The Court ruled that members of Parliament may exert their influence and receive personal financial benefits, if they act in their personal capacity, i.e. not in their capacity as a member of Parliament. Their mandate is defined as work in parliament, in plenary sessions, in committees, in parliamentary groups, or in commissions composed by members of parliament. Acts in their personal capacity, such as the mask deal brokering, do therefore not qualify as bribery, leaving considerable room for conflicts of interest. Notably, there is no stand-alone provision on trading of influence under German law, see UNODC, Country Review Report of the Federal Republic of Germany (2017), p. 55. GRECO requested Germany to reconsider its reservations made in respect of Article 12 of the Criminal Law Convention and to consider a stand-alone trading in influence offence, see GRECO, Third Evaluation, Second Addendum to the Second Compliance Report on Germany (2019), recommendation ix, para. 17.

<sup>96</sup> In this sense also the Federal Court of Justice, calling for the legislator to regulate the gap. Bundesgerichtshof, decision of 5 July 2022, StB 7-9/22. For more details on systemic weaknesses regarding parliamentarians' side jobs, see further below in this text, pp. 19-20.

<sup>97</sup> Pursuant to announcements made by the Minister of Justice, see Frankfurter Allgemeine, Buschmann intends to clean out the criminal law (31 December 2022).

<sup>98</sup> According to information received from the Ministry of Justice in the context of the country visit to Germany, three options are discussed between the Ministry of Justice and the Parliament, including an amendment of section 108(e) of the Criminal Code, the creation of a new provision in the Criminal Code as well as the creation of a new provision in the law of Parliamentarians as unethical remunerated conduct of a company taking advantage of a parliamentarian.

<sup>99</sup> Plans include the increase of the currently applicable maximum fines of EUR 10 million as corporate sanctions to increase the deterrent effect, particularly with regard to large, global enterprises, while considering the introduction of revenue-based fines, according to information received by the Ministry of Justice in the context of the country visit to Germany.

<sup>100</sup> Law on the sanctioning of association related crimes. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 11.

Increased corporate liability<sup>101</sup> for criminal offences could further facilitate Germany's enforcement levels in criminal prosecutions of foreign bribery<sup>102</sup>.

**Enforcement against corruption in practice, including high-level corruption, shows no systemic weaknesses.** There were no concerns raised by stakeholders with regard to the treatment of high-level corruption cases or the investigation, prosecution or final judgments of corruption and high-level corruption cases<sup>103</sup>. The levels of human and financial resources as well as high specialisation for corruption cases within the police, the prosecution service, and the courts are considered overall adequate to carry out their tasks<sup>104</sup>. Cooperation between the relevant anti-corruption entities, including the prosecution service, police, the Financial Intelligence Unit (FIU) and other relevant entities is reported to be good<sup>105</sup>, although concerns were flagged, as previously reported, with regard to the operational effectiveness of the FIU in practice and backlogs<sup>106</sup>, the latter of which have been cleared by the end of May according to the Government<sup>107</sup>. The Ministry of Finance has announced to strengthen investigators and digitalisation and to appoint a new FIU head with expertise in financial crime to take up his role as of 1 July 2023<sup>108</sup>.

**The number of investigated corruption crimes has significantly increased, while the overall financial damage caused by corruption decreased compared to the previous year reported<sup>109</sup>.** The latest 2022 official National Situation Report details 7433 police-registered corruption cases in 2021, which presents a stark increase of approximately 35% compared to 2020<sup>110</sup>. As in the previous year, the high numbers are due to investigations of active and passive bribery, with a significant increase of aggravated bribery cases with particularly high values of undue financial advantages<sup>111</sup>. In addition, in this reporting period, the high numbers also relate to aggravated corruption cases committed within the framework of a

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<sup>101</sup> 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.

<sup>102</sup> 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. See also Transparency International, Exporting Corruption (2022), pp. 8, 48-49, referencing moderate enforcement in foreign bribery cases, including 16 opened investigations, 6 commenced cases and 40 conclusions of cases with sanctions in the years 2018-2021, while also noting the lack of criminal liability of corporations as the main weakness.

<sup>103</sup> Information received from the Prosecution Service, Judges' Association and Bar Association in the context of the country visit to Germany.

<sup>104</sup> Information received from the Prosecution Service/Ministry of Interior/Federal Criminal Police in the context of the country visit to Germany. See input from Germany for the 2023 Rule of Law Report, p. 25.

<sup>105</sup> Similarly, the EPPO has raised no concerns regarding the cooperation with Germany.

<sup>106</sup> In December 2022, the head of the FIU stepped down, Sueddeutsche Zeitung, Financial Intelligence Unit, Germany's Anti-money laundering authority drowns in chaos (2 March 2023), and Die Zeit, Financial Intelligence Unit: Nice and clean please (22 December 2022), Cf. also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 8.

<sup>107</sup> Contribution from Germany for the 2023 Rule of Law Report.

<sup>108</sup> Ministry of Finance, Press release: Financial Intelligence Unit gets new leadership (29 March 2023).

<sup>109</sup> German Federal Criminal Police Office, Federal Overview on Corruption 2021 (15 September 2022).

<sup>110</sup> German Federal Criminal Police Office, Federal Overview on Corruption 2021 (15 September 2022). Fluctuations in the data are reportedly due to the complexity of corruption investigations and the fact that large-scale investigations in several *Länder* conducted involved a high number of individual criminal acts.

<sup>111</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 12.



criminal organisations. At the same time, the number of public officials accepting a bribe is at the lowest level of the past five years, which may be due to closed administrations during the COVID-19 pandemic<sup>112</sup>. The detected financial damage caused by corruption has notably decreased compared to 2020, by approximately 25% amounting to EUR 61 million in 2021. Of those who accepted a bribe, 55% have been public officials, a decrease by 16% compared to 2020. Construction is the most affected sector, while the business sector and public administration represent the preferred targets<sup>113</sup>. The report, which illustrates in a robust annual analysis recent trends, developments and statistics on the phenomenon of corruption and Germany's efforts to repress corruption, could be further improved by including information broken down by the 16 *Länder*<sup>114</sup> and references to the nexus with organised crime<sup>115</sup>.

**There are plans to further strengthen the mandatory lobby register rules.** Germany's mandatory lobby register<sup>116</sup> that came into force on 1 January 2022<sup>117</sup> is administered by the Federal Parliament (*Bundestag*) hosting more than 5 500 interest representative entries after 15 months of existence<sup>118</sup>. All individuals, companies, associations, and other organisations must register, if they contact members, bodies, factions or groups of the Federal Parliament, the Federal Government, including parliamentary state secretaries, heads of directorates and other top-level executives above this level, in order to directly or indirectly influence the decision-making process. The legislative process in the Parliament has started in June on Government proposals to widen its scope to register a larger group of interest

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<sup>112</sup> German Federal Criminal Police Office, Federal Situation Report on Corruption 2021 (15 September 2022).

<sup>113</sup> This data illustrates a change to the previous year, where the services sector was the most affected, while the public administration alone represented the preferred target, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 12.

<sup>114</sup> The data 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 of the Federal Criminal Police Office. The situation report is published annually at the start of the year for the preceding year.

<sup>115</sup> The role of corruption in organised crime, as described in the Situation Report on Corruption (see *ibid*, p. 18), could be featured more prominently in this report to gain further insights, including from a new project launched regarding corruption in ports. Information received from the Federal Criminal Police Office in the context of the country visit to Germany. To be noted that the Situation Report on Organised Crime (21 September 2022) contains findings and data on the role of corruption in organised crime.

<sup>116</sup> Law for the introduction of a lobby register for interest representatives toward the German Federal Parliament (Lobbyregister law - LobbyRG) of 16 April 2021. The register is accompanied by a lobbying code of conduct, the 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. See in this context also GRECO, Fifth Evaluation Round, Interim Compliance Report (2020), para. 57. See also 2021 Rule of Law Report, Country Chapter on the rule of Law situation in Germany, p. 9.

<sup>117</sup> 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. For the level of lobbying transparency at the 16 *Laender* level, see Transparency International's Lobbyranking der Bundesländer 2022, including an overview over available lobby registers, legislative footprints, cooling off periods and codes of conduct at local level. See in this context also Abgeordnetenwatch, A patchwork: The insufficient lobby register rules of the *Laender* (19 January 2023).

<sup>118</sup> The lobby register is available at [www.bundestag.de/lobbyregister](http://www.bundestag.de/lobbyregister)

representatives<sup>119</sup>, and to also record lower-level meetings at technical level in the ministries from where legislative drafts originate<sup>120</sup>. These plans are yet to be taken forward. Current debates focus on the transparency requirement of the lobby register to publish third-party donations to the registering organisation that are above EUR 20 000 for its potential negative effects on donors' willingness to donate in the future<sup>121</sup>. Deficits were also flagged with regard to the comparability of entered lobby cost data<sup>122</sup> and the frequent lack of registration of companies that outsource their lobbying activity through a chain of several sub-contracts, which present an obstacle to tracing the real interest representatives behind the lobbying activity<sup>123</sup>. The Parliament Administration follows up only on the most implausible entries and evident formal errors<sup>124</sup> and verifies the entered data for any suspicious content<sup>125</sup>. The administration relies therefore on third parties' compliance monitoring, with so far no reported case of missing or false entries within the first year of the register's existence<sup>126</sup>.

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<sup>119</sup> See Legislative proposal of the Federal Parliament for the Amendment of the Lobby Register (20/7346). The first reading has taken place on 23 June 2023; Bundestag (2023), Amendment of the Lobby Register Law. Amendments are proposed 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 would have to include churches and religious communities, trade unions and employer associations to allow for their mandatory registration, representing the most important lobby actors in Germany 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. See also Abgeordnetenwatch, Intransparent Lobby Contacts of members of Parliament, hardly any control of the rules: Report of the Council of Europe criticises Germany again due to the lack of reforms (30 November 2022).

<sup>120</sup> Coalition Agreement 2021-2025, p. 10. This would apply to heads of divisions and desk officers, according to information received by the Government in the context of the Member State consultation.

<sup>121</sup> See Handelsblatt, Government coalition intends to ease the lobby regulations for non-profit organisations (23 February 2023). Information also received from Ministry of Justice/ Transparency International/ LobbyControl in the context of the country visit to Germany, raising concerns as to the requirement's potentially disadvantageous effects on civil society versus other interest representatives, noting however that there is no obvious decline in donations after one year of existence of the lobby register. Discussions centre on the introduction of a specific percentage of the organisation's annual budget or specific ranges instead of a threshold.

<sup>122</sup> According to information received from Transparency International in the context of the country visit, some interest representatives enter all costs of their office, while others include exclusively the costs relating specifically to lobbying activities. The exceptions for disclosing financial information are considered too broad and too extensively used in practice, while there is no follow-up by Parliament Administration. The threshold of fifty contacts within three months as a requirement to register is also found to be too high.

<sup>123</sup> The mandatory registration applies also to organisations which hire external lobbying services, see Bundestag, Lobbyregister, Informationen für Interessenvertreterinnen und Interessenvertreter, However, LobbyControl, One year lobby register (2023), highlights the specific and frequent scenario of companies hiring external consulting firms, which contract another agency that hire an independent lobbyist to undertake the interest representation activities of the company

<sup>124</sup> According to information received by the Parliament Administration in the context of the country visit to Germany, the first year of the lobby register in practice has shown the need to provide much more information to interest representatives than expected to improve the quality of the register data, with a number of implausible figures or incorrect entries that are mainly caused by misunderstandings.

<sup>125</sup> An initial suggestion from stakeholders to establish an independent oversight body was not implemented. LobbyControl, 'The lobby register is coming – Our evaluation' (2021), similarly, contribution from Transparency International Germany for the 2022 Rule of Law Report, p. 1.

<sup>126</sup> Information received from the Parliament Administration/LobbyControl/Transparency International in the context of the country visit to Germany. Detected false entries can trigger administrative fines of up to EUR 50.000. Stakeholders consider the ceiling of fines 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 2023 Rule of Law Report, p. 1; information received from LobbyControl in the context of the country visit to Germany.

Consequently, no sanctions have been applied in 2022<sup>127</sup>. A year in, interest representatives are now also obliged to confirm for the first time their entries in the register by signature<sup>128</sup>. An official assessment of the lobby register is envisaged for spring 2025.

**Consultations to introduce a legislative footprint on lobbying during the legislative process are continuing within the Federal Government, showing some progress.** The 2022 Rule of Law Report recommended to Germany to “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”<sup>129</sup>. The introduction of such a ‘legislative footprint’<sup>130</sup> or a digital legislative portal to publish who sought to influence legislative drafts is delayed<sup>131</sup>. Consultations within the Federal Government are continuing<sup>132</sup>. The decision-making process is at an initial stage due to considerations to link the legislative footprint – rather than to the reform of the lobby register<sup>133</sup> – to a broader e-government initiative<sup>134</sup> beyond the exclusive remit of the Parliament, requiring a coordination process with the Government. A feasibility study is currently considered to inform this coordination process<sup>135</sup>. 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<sup>136</sup>. It would also help to reduce risks of corruption, conflicts of interest and regulatory capture, while the public interest is at the core of the prospective legislation. A decision on whether or not to link the legislative footprint to the e-government initiative is envisaged for the end of 2023, while the introduction of the legislative footprint is expected

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The Lobby Register Act provides some public information on significant breaches by special interest representatives of the code of conduct.

<sup>127</sup> Information received from Administration of the Parliament in the context of the country visit to Germany. See also LobbyControl, One year lobby register (2 January 2023).

<sup>128</sup> According to information received from the Administration of the Parliament in the context of the country visit to Germany, interest representatives have not yet horizontally complied with this yearly obligation, since the first year of the register’s existence has passed.

<sup>129</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 2.

<sup>130</sup> A legislative footprint is a comprehensive public record of lobbyists’ influence on a piece of legislation, which was originally planned to be implemented by the end of 2022. 2022 Rule of Law Report, Country chapter on the rule of law situation in Germany, p. 13.

<sup>131</sup> Information received from Administration of the Parliament in the context of the country visit to Germany. See also Coalition Agreement 2021-2025, p. 10.

<sup>132</sup> Input from Germany for the 2023 Rule of Law Report, p. 15.

<sup>133</sup> Due to the intrinsic thematic link, civil society organisations view the thematic and timely separation of the lobby register reform and the introduction of the legislative footprint critically, according to information received from Transparency International in the context of the country visit to Germany.

<sup>134</sup> For more information on the e-government initiative, see Bundesregierung, , Project e-legislation, and e-legislative procedure of the Federal Government.

<sup>135</sup> The feasibility study would, among others, assist the Government to clarify questions as of when in the decision-making process publication of interest representatives’ input is required and what would be considered too early interfering with the development of internal positions. Information received from Administration of the Parliament in the context of the country visit to Germany.

<sup>136</sup> 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 broke. See, for instance, LobbyControl (2021), Lobbying undermines democracy – Ten theses.

by the end of 2024<sup>137</sup>. Against this background, there is some progress regarding the implementation of the recommendation made in the 2022 Rule of Law Report.

**Supplementary guidelines on post-employment are under preparation but do not address the need to ensure more consistency in the various existing rules<sup>138</sup>.** The 2022 Rule of Law report recommended to Germany to “[s]trengthen 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”<sup>139</sup>. The Federal Government does not plan to legislate 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<sup>140</sup>, despite international recommendations<sup>141</sup>. Notably, 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<sup>142</sup>. For federal ministers and federal parliamentary state secretaries, the cooling-off periods are shorter with a 12-18 month-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, as recommended by GRECO<sup>143</sup>. New preventative guidelines will be prepared for the Federal Government to sensitise retiring public officials<sup>144</sup>. As limited action has been taken to strengthen the existing rules on revolving doors, some progress has been made regarding the recommendation in the 2022 Rule of Law Report.

**The monitoring of secondary activities of members of Parliament constitutes a challenge.** As in the previous year, there were delays in the reporting of parliamentarians’

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<sup>137</sup> Information received from Administration of the Parliament in the context of the country visit to Germany.

<sup>138</sup> 2022 and 2021 Rule of Law Report, Country chapter on the rule of law situation in Germany, p. 13 (for 2022) and p. 9 (for 2021).

<sup>139</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 2.

<sup>140</sup> Input from Germany for the 2023 Rule of Law Report, pp. 12-14, including the Government’s underlying reasoning, which prefers to provide for discretion to balance conflicting constitutional rights and the differentiation of career prospects of, for example, term-limited ministers and life-long public officials.

<sup>141</sup> 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; 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), applying mutatis mutandis to parliamentary state secretaries) and the Act on the Legal Relationships of Parliamentary State Secretaries.

<sup>142</sup> 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.

<sup>143</sup> See GRECO recommendation in the GRECO Fifth Evaluation Round – Evaluation Report, para. 89, highlighting also that, according to the government, the difference between the length of the cooling off period between politically appointed civil servants (three to five years) and ministers/parliamentary state secretaries (12-18 months) takes into account that civil servants normally have life tenure with their activities usually ending on the grounds of old age. Federal ministers and parliamentary state secretaries hold their offices for a more temporary period of time. In this context, 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.

<sup>144</sup> Information received from the Ministry of Justice in the context of the country visit to Germany.

side activities in 2022 that continued in 2023<sup>145</sup>. The publication of the members' declaration of secondary activities was completed in April 2023 except for a few individual cases<sup>146</sup>. In September 2022, the administration of the Federal Parliament updated its guidelines for members of Parliament, including the rules on remunerated side jobs<sup>147</sup>. This follows amendments of the Act on members of the Federal Parliament<sup>148</sup> adopted in 2021, which addressed some integrity challenges for parliamentarians<sup>149</sup>. The reform introduced a prohibition for members of Parliament of remunerated lobby activities as secondary activities and of remunerated lectures that are in connection to their parliamentary work<sup>150</sup>. Supervision and enforcement present obstacles in practice due to the lack of a fully independent oversight body or ethics committee with a mandate to investigate breaches<sup>151</sup>. The reform does not entail the disclosure of the actual time spent on the secondary activity<sup>152</sup>. 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<sup>153</sup>.

**Asset disclosure rules for members of the Federal Government are incomplete<sup>154</sup>.** According to the Government, the transparency measures in place have proven appropriate to prevent corruption in practice, not requiring or justifying any legislative changes<sup>155</sup>. As

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<sup>145</sup> Abgeordnetenwatch, Members of the Parliament as lobbyists (7 July 2022), and information received from LobbyControl in the context of the country visit to Germany. This is a continuing issue, see 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.

<sup>146</sup> At the end of April 2023, the declarations of 739 members had been published. Only one member's declaration remained to be published due to legal issues requiring further clarification. In addition, for another member, the deadline was still running following his move up. See also LobbyControl, Second incomes still not public (6 September 2022). See also Abgeordnetenwatch, Second incomes, members of Parliament as lobbyists Lobbyisten (7 July 2022).

<sup>147</sup> Deutscher Bundestag, Rules on conduct for members of the German Federal Parliament (September 2022).

<sup>148</sup> Law amending the Act on Members of the Bundestag - Improvement of the transparency rules for members of the German Bundestag.

<sup>149</sup> 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. Notably, also implementing provisions regarding the substance and scope of the obligations established by the Act on members of the Federal Parliament were issued and adopted by the Council of Elders in May 2022, which are relevant for the interpretation and application of the law.

<sup>150</sup> See also discussion above on strengthening the criminal offence of bribery of parliamentarians.

<sup>151</sup> 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 subordinated to the Presidium of the Parliament. See also GRECO Fourth Evaluation Round – Second Interim Compliance Report (22 November 2022), para. 38, p. 9, raising questions as to whether the administration is not too close to power in order to effectively monitor and, if need be, criticise members of Parliament

<sup>152</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 10.

<sup>153</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 14-17, p. 4.

<sup>154</sup> 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 Parliament Administration and Transparency International in the context of the country visit.

<sup>155</sup> Information received from the Ministry of Justice in the context of the country visit to Germany, indicating that further legislative activity could raise proportionality issues. Germany has carried out an extensive internal review of its rule on asset declarations in 2021-2022 that GRECO accepted as meeting its recommendation (iii) of the Fourth Evaluation Round, Evaluation Report, see also 2022 Rule of Law Report, Country Chapter on the rule of law situation, p. 14.

previously reported, for members of the Federal Parliament, the categories of information to be disclosed in their financial declarations does not extend to liabilities and significant assets, such as shareholdings in private enterprises below the current threshold<sup>156</sup>. Their assets and financial interests are subject to notification if the respective member is in charge of an issue in a parliamentary committee, while being remunerated through a secondary activity<sup>157</sup>.

**The revision of Germany’s political party financing rules has not yet begun<sup>158</sup>, while the Constitutional Court ruled against the unscheduled, additional increase of party finances.** Party financing is regulated in the Law for Members of the Parliament and the Law for Political Parties<sup>159</sup>. The 2021 coalition agreement includes plans to regulate sponsoring and hidden campaign finance by third parties<sup>160</sup>, but an indicative timeline for reform in this regard is not yet set<sup>161</sup>. Furthermore, to strengthen its oversight and control functions the Parliament’s administration has not yet increased its human and financial resources<sup>162</sup>. The Parliament Administration is not enabled to 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<sup>163</sup>. Concerns

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<sup>156</sup> Members of the Parliament are obliged to disclose shareholdings in private corporations or partnerships if these amount to a share of more than five percent, unless the activity of the partnerships relates exclusively to letting and leasing in connection with the management of private property, as well as revenues of such holdings (see section 45(2)(6), 45(3) Member of the Bundestag Act. . 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. Germany will not widen the scope of declarations to also include information on spouses and dependent family members, according to 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.

<sup>157</sup> 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 14 (for 2022) and p. 10 (for 2021). Since 2005, ten fines have been imposed for serious violations, which have been made public by the President of the Parliament, see Abgeordnetenwatch, Members of Parliament breached transparency rules a hundred times - without consequences Transparenzvorschriften – ohne Konsequenzen (26 February 2022), reporting that in the first ten months of 2021, 96 violations were reported, and 71 of them were ascertained. Seven times members of Parliament received a warning. In 64 cases, members of Parliament were reminded of the codes of conduct, while no sanctions were applied. The Law of members of the Parliament provides for fines of up to half their annual remuneration, depending on the severity of the individual case and the degree of fault. See also report on investigations and sanctions by the President of the Bundestag (23. September 2022), <https://dserver.bundestag.de/btd/20/035/2003500.pdf>.

<sup>158</sup> The initiative falls into the competence of the Parliament. According to information received from the Ministry of Justice, neither a concrete legislative proposal nor a timeline is yet available.

<sup>159</sup> 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 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).

<sup>160</sup> Coalition Agreement 2021-2025, p. 10.

<sup>161</sup> The Government plans have been welcomed by Transparency International/ LobbyControl, see 2022 Rule of Law report, Country Chapter on the rule of law situation in Germany.

<sup>162</sup> Coalition Agreement 2021-2025 p. 10.

<sup>163</sup> Concerns in this regard are flagged in UNCAC Country Review Report of Germany, Review cycle 2016-2021, p. 67.

remain regarding the significant time lapse between the party income and its reporting<sup>164</sup>. On 24 January 2023, the Constitutional Court ruled that the unscheduled additional increase in public funding for political parties in 2018 by approximately EUR 25 million to a total of EUR 190 million is unconstitutional<sup>165</sup>. While political parties will have to return the increase, the risk of their dependency on private donations have been emphasised<sup>166</sup>.

**Legislation on whistleblower protection has been adopted<sup>167</sup>.** A new draft law was published in April 2022<sup>168</sup> and passed by the Federal Parliament on 16 December 2022<sup>169</sup>, after a first attempt in 2021 had not gone through. The draft law was largely welcomed by stakeholders as it provided for several improvements compared to the previous draft<sup>170</sup>. However, the draft law did not pass the chamber of the *Länder* representatives on 10 February 2023<sup>171</sup>. On 9 May, the conciliation committee agreed on a compromise proposal which was adopted on 31 May<sup>172</sup>. In 2022, 76.7% of corruption investigations were initiated on the basis of external information and public disclosures<sup>173</sup>, pointing to the need for horizontal whistleblower protection.

**A new public procurement transformation package to modernise public procurement is under way with the potential for better corruption prevention.** Public consultations on the package of the Federal Ministry for Economic Affairs and Climate Action to simplify, digitise and speed up public procurement procedures have been conducted until mid-February 2023<sup>174</sup>. The initiative, which is part of the Government's coalition agreement, was overall

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<sup>164</sup> 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 15 (for 2022) and p. 10 (for 2021). 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.

<sup>165</sup> It is not uncommon to increase public funding for political parties but frequently exercised depending on the development of prices. However, for unscheduled, additional increases there are strict regulations in place, which the Constitutional Court confirmed in its ruling of 24 January 2023, 2 BvF 2/18. Bundesverfassungsgericht, Lifting of ‚absolute ceiling‘ for party finance by the state is unconstitutional Press Statement No. 9/2023 of 24 January 2023.

<sup>166</sup> Information received from LobbyControl in the context of the country visit.

<sup>167</sup> Federal Law Gazette 2023 I No. 140, <https://www.recht.bund.de/bgbl/1/2023/140/VO.html>.

<sup>168</sup> Press statement of the Ministry of Justice (2022), Better protection for whistleblowers.

<sup>169</sup> Bundestag, Better protection for whistleblowers in the work place agreed (16 December 2022)

<sup>170</sup> Such an improvement noted in particular was the obligation on companies and public administrations to introduce, in addition to the mandatory reporting channels also possibilities for anonymous reporting.. Information received from Transparency International/ LobbyControl in the context of the country visit to Germany. See also Transparency International, Finally protection for whistleblowers : Federal Parliament passes the bill (16 December 2022), noting some more areas where further improvements could have been taken on board, including, for example, to address the lack of financial aid mechanisms for whistleblowers and the too broad exceptions for reasons of national security.

<sup>171</sup> Bundestag – Press release, Federal Council of the Laender does not approve the whistleblower law (17 February 2023),

<sup>172</sup> This proposal does not address the criticised lack in the previous draft law of a legal obligation for companies to accept and follow up on anonymous channels. and reduces - compared to the previous draft law – the maximum fines for companies that fail to comply with the new rules (from EUR 100.000 to now EUR 50.000). Legal Tribune Online (LTO), Whistleblower Law could still come in mid-June (10 May 2023). Federal Law Gazette 2023 I Nr. 140 of 02.06.2023

<sup>173</sup> Federal Criminal Office, Federal Situation Report Corruption 2021 (2022), p. 17, indicating an increase by 31,6% (from 45,1% in 2021).

<sup>174</sup> Public consultation on the transformation of the public procurement law (29 December 2022).

welcomed by stakeholders<sup>175</sup> carrying the potential to increase transparency and thus corruption prevention in public contracting<sup>176</sup>. In a previously reported corruption scandal relating to procured medical equipment, the Federal Court of Justice has ruled in the case of passive bribery of members of the Parliament who have brokered facemask deals that, although arguably unethical, such conduct would not constitute bribery under the current law<sup>177</sup>. For all contracting authorities that are not under the obligation to consult the electronic competition register<sup>178</sup>, the current consultation obligations of the corruption register of the *Länder* and the commercial central register remain in place<sup>179</sup>.

### **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<sup>180</sup>. 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<sup>181</sup>. The 3<sup>rd</sup> amending treaty to the State Media Treaty, concluded in November 2022, is presently undergoing ratification and is intended to enter into force in July 2023<sup>182</sup>. Currently, a 4<sup>th</sup> amendment to the State Media Treaty was concluded by the governments of the *Länder* and the parliaments of the *Länder* have started the process of ratification<sup>183</sup>. This is completed by national legislation and safeguarded by constitutional guarantees and the relevant jurisprudence of the Constitutional Court. The federal structure

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<sup>175</sup> See e.g. Transparency International, Position paper for the public consultation on the transformation of public procurement by the Federal Ministry of Economics and Climate Protection (14 February 2023).

<sup>176</sup> Businesses' attitudes towards corruption in the EU shows that 27% of companies Germany (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. This is one percentage point above the EU average.

<sup>177</sup> Bundesgerichtshof, BGH rules on criminal responsibility for active and passive bribery of members of the Parliament in the context of the so-called mask affair (12 July 2022). Acts in their personal capacity, such as the mask deal brokering, does therefore not qualify as bribery, leaving considerable room for conflicts of interest. For more details, see also further above in this text.

<sup>178</sup> As previously reported, since 1 June 2022 public contracting authorities can consult the electronic competition register in support of public procurement processes, which hosts and flags relevant information for the exclusion of bidders from procurements, including on final convictions, penalty orders and fines for corruption, bribery, money laundering, tax evasion, and other serious crimes. There is only a consultation obligation in place for contract values beyond EUR 30.000 and for contracting authorities responsible for the areas of water, energy, traffic and postal service as of the EU threshold. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 11. 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.

<sup>179</sup> Bundeskartellamt, The competition register at the Federal Cartel Office. In turn, where there is an obligation to consult the electronic competition register, the obligations have been eliminated to consult the commercial central register and the corruption register of the *Länder* in procurement procedures. The option of consulting the commercial central register on a voluntary basis will remain until 31 May 2025.

<sup>180</sup> 2022, 2021 and 2020 Rule of Law Reports, Country Chapters on the rule of law situation in Germany.

<sup>181</sup> 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*.

<sup>182</sup> State Government of Rheinland-Pfalz (2023), *Länder* sign 3rd amending treaty to the State Media Treaty on the reform of public service broadcasting.

<sup>183</sup> State Government of Rheinland-Pfalz (2023), The reform of public service broadcasting is progressing: more transparency, compliance, stronger governance.



results in a variety of legal frameworks, supervisory structures and public service broadcasters providing an additional safeguard for media pluralism and media freedom<sup>184</sup>.

**There have been no recent changes concerning the 14 State Media Authorities functioning as regulatory authorities for commercial broadcasters at the *Länder* level.**

As previously reported, the independence of such authorities remains ensured, including as regards financing<sup>185</sup>. The 2023 Media Pluralism Monitor concludes that “in 2022 there were no signs of any kind of dependence on the state media authorities”<sup>186</sup>.

**The self-regulation of the press by the German Press Council is well established and developed.**

The Press Council, composed of journalists’ and publishers’ associations, is a well-accepted actor in the German media landscape. In 2022, the number of complaints on press publications received by the Press Council decreased significantly to the volume recorded before the COVID 19 pandemic which was the topic of a large number of complaints in the past years (1 733 complaints received in 2022, compared to 2 556 in 2021 and a peak of 4 085 complaints in 2020)<sup>187</sup>. The Press Council issued 47 public reprimands in 2022 of which more than 80% have been published. More than half of these reprimands related to the lack of a clear distinction between editorial and commercial content or violations of the protection of privacy as defined in the Press Code<sup>188</sup>.

**Transparency of media ownership continues to be ensured at a good level.**

The State Media Treaty of 2020 included a protocol declaration of the *Länder* agreeing on the objective to ensure a future-proof media concentration framework. The *Länder* are in the process of discussing first proposals for a revision of the current framework<sup>189</sup>. As in many other Member States, Germany’s media system continues to be impacted by the digitalisation of media and a transition in business models<sup>190</sup>. At the beginning of 2023, large publishing houses announced staff cuts<sup>191</sup>. As regards media ownership transparency, legislative provisions are in place for commercial broadcasters as well as online news media and the press<sup>192</sup>. As reported in 2021 and 2022, access to the information covering television, radio, press and online media is notably ensured via a public database of the Commission on Concentration in the Media (KEK)<sup>193</sup>. The indicator on transparency of media ownership of the 2023 Media Pluralism Monitor shows a low risk<sup>194</sup>.

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<sup>184</sup> Germany ranks 21<sup>st</sup> in the 2023 Reporters without Borders World Press Freedom Index compared to 16th in the previous year.

<sup>185</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 17; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 12.

<sup>186</sup> 2023 Media Pluralism Monitor, p. 11.

<sup>187</sup> Press Council (2023), Annual Report 2022.

<sup>188</sup> Press Council (2023), Annual Report 2022, p. 6.

<sup>189</sup> Information received from the representatives of the *Länder* in the context of the country visit to Germany.

<sup>190</sup> 2023 Media Pluralism Monitor, p. 14; 2022 Media Pluralism Monitor, p. 13; Information received from the German Newspaper Publishers and Digital Publishers Association in the context of the country visit to Germany.

<sup>191</sup> Frankfurter Allgemeine Zeitung (2023), Döpfner’s radical cure; Süddeutsche Zeitung (2023), RTL plans to cut 700 jobs at Gruner + Jahr.

<sup>192</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 17; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 12.

<sup>193</sup> KEK (2023), Media concentration.

<sup>194</sup> 2023 Media Pluralism Monitor, p. 13.

**An update to the programme mandate for the public service broadcasters was agreed in 2022**<sup>195</sup>. The 3<sup>rd</sup> amending treaty to the State Media Treaty aims to adapt the remit and programming of the public service broadcasters to changing viewing habits, notably by increasing the flexibility of the public service broadcasters to adapt their offer and strengthening control mechanisms in the areas of programming and finance<sup>196</sup>.

**Stronger compliance safeguards for the public service broadcasters are being prepared.** This is a reaction to a 2022 scandal on allegations of mismanagement concerning the public service broadcaster for Berlin and Brandenburg (RBB)<sup>197</sup>, which ultimately led to the dismissal of its director, who at the time was chairing the ARD<sup>198</sup>. Many observers consider this incident as revealing certain weaknesses in the specific case of the RBB, and not a general issue in the system<sup>199</sup>. However, it is seen as having impacted the image of public service broadcasters<sup>200</sup>. In this context the 4<sup>th</sup> amendment to the State Media Treaty aims to strengthen mechanisms for compliance, transparency, and independent supervisory committees<sup>201</sup>. The incident may also have indirect repercussions on future discussions on the financing of the public service broadcasters, which are also impacted by the increased inflation<sup>202</sup>. At the same time, the independence safeguards for public service media remain strong and there is an established mechanism to assess the financing needs. In this regard, the legal requirement to ensure an adequate financing of the public service broadcasters has been confirmed in a 2021 ruling of the Federal Constitutional Court<sup>203</sup>. The next report of the Commission for the determination of the financial needs of public service broadcasters is due in 2024. With regard to the long-term perspective, the *Länder* have set-up a ‘future council’ of experts to come up with recommendations on the future of public service broadcasting<sup>204</sup>.

**The Federal Government maintains its plan to establish in law the right to information of the press as regards federal authorities and some progress has been made by starting internal preparations**<sup>205</sup>. The 2022 Rule of Law Report recommended to Germany to “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”<sup>206</sup>, which was part of the coalition agreement of the Federal Government<sup>207</sup>. The jurisprudence of the Federal Constitutional Court has confirmed the right of the press at national level to request

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<sup>195</sup> According to the European Parliament’s Flash Eurobarometer: News & Media Survey 2022, 62% of respondents in Germany stated that they trust public TV and radio stations, above the EU average of 49%.

<sup>196</sup> 3<sup>rd</sup> Amending Treaty to the State Media Treaty (2022); Explanatory statement on the 3<sup>rd</sup> Amending Treaty to the State Media Treaty (2022).

<sup>197</sup> Tagesschau (2022), Wrong accounts and faulty contracts.

<sup>198</sup> The ARD is the joint organisation of the country’s nine regional public service broadcasters. In addition, Germany’s public service broadcasting consists of the ZDF and Deutschlandradio.

<sup>199</sup> Information received from the representatives of the *Länder*, the German Union of Journalists and the German Association of Journalists in the context of the country visit to Germany.

<sup>200</sup> Information received from the German Union of Journalists in the context of the country visit to Germany.

<sup>201</sup> State Government of Rheinland-Pfalz (2023), The reform of public service broadcasting is progressing: more transparency, compliance, stronger governance.

<sup>202</sup> ARD (2022), Report on the economic and financial situation of the regional public service broadcasters.

<sup>203</sup> Federal Constitutional Court (2021), Order of the First Senate of 20 July 2021 - 1 BvR 2756/20.

<sup>204</sup> State Government of Rheinland-Pfalz (2023), Meeting of the Broadcasting Commission on 8 March 2023.

<sup>205</sup> Coalition Agreement 2021-2025, p. 124.

<sup>206</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 2.

<sup>207</sup> Coalition Agreement 2021-2025, p. 124.

access to information based on the Constitution<sup>208</sup>. At the regional level, there are press laws in place guaranteeing the access to information by journalists in most *Länder*<sup>209</sup>. However, as previously reported<sup>210</sup>, civil society organisations, journalist representatives and publishers see gaps in the legal framework regarding the access to information from federal authorities which could be addressed by the planned law<sup>211</sup>. The Federal Government maintains its plan and has stated that internal preparations have begun, however details remain unspecified<sup>212</sup>. GRECO concluded at the end of 2022 that its recommendation to independently evaluate the Freedom of Information Act and consider possible improvements has not yet been implemented<sup>213</sup>. As preparations have begun, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**Authorities and journalist representatives continue to address concerns related to physical aggressions against journalists.** The Mapping Media Freedom project recorded 87 violations of media freedom in Germany in 2022, with more than two in three incidents taking place during protests; this data should be compared to the 119 alerts in 2021<sup>214</sup>. This downward trend could partly be explained by the decrease of protests related to COVID-19 measures, to which aggressions against journalists were linked in 2020 and 2021<sup>215</sup>. Preliminary police statistics for 2022 indicate a total of 320 registered criminal offences in the broad target category ‘media’, showing a slight increase compared to 276 cases in 2021<sup>216</sup>. Since the last report, five alerts relating to events in Germany have been registered on the Council of Europe’s Platform to promote the protection of journalism and safety of journalists<sup>217</sup>. The Press Council continues to see a need for a better protection of journalists when covering protests or major public events, and journalist representatives continue to point to a perception of a high risk for journalists when reporting on societal groups hostile to media<sup>218</sup>. Efforts continue to increase exchanges between the police and journalists, for example with initiatives such as training courses by the Press Council in police academies as well as further measures for the protection of journalists and the sensibilisation of police

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<sup>208</sup> Input from Germany for the 2023 Rule of Law Report, p. 26; Basic Law, Art. 5(1); 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 19.

<sup>209</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 19.

<sup>210</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 13; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 19.

<sup>211</sup> Information received from the German Union of Journalists, the German Newspaper Publishers and Digital publishers Association, Transparency International Germany and the Society for Civil Rights in the context of the country visit to Germany.

<sup>212</sup> Input from Germany for the 2023 Rule of Law Report, p. 26; Information received from the Ministry of State for Culture and Media in the context of the country visit to Germany.

<sup>213</sup> GRECO (2023), Fifth evaluation round, Compliance Report Germany, p. 5.

<sup>214</sup> Media Freedom Rapid Response (2022), Mapping Media Freedom - Monitoring Report 2022, p. 26; Media Freedom Rapid Response (2021), Mapping Media Freedom - Monitoring Report 2021, p.11.

<sup>215</sup> Media Freedom Rapid Response (2021), Mapping Media Freedom - Monitoring Report 2021, p. 21; Media Freedom Rapid Response (2022), Mapping Media Freedom - Monitoring Report 2022, p. 19; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 19.

<sup>216</sup> These 320 cases included 41 cases of threats and 46 cases of violent offences, of which 41 qualified as personal injuries. See Bundestag (2023), Reply of the German Federal Government to a Parliamentary Question on attacks on media professionals (Drucksache 20/5934); Bundestag (2022), Reply of the German Federal Government to a Parliamentary Question on attacks on media professionals in the context of pandemic-related protests (Drucksache 20/949).

<sup>217</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Germany.

<sup>218</sup> Press Council (2023), Annual Report 2022, p. 14; Mapping Media Freedom Monitoring Report 2022, p. 27.

officers at the level of the *Länder*<sup>219</sup>. Moreover, an update of the existing principles of conduct for the media and the police continues to be discussed between the *Länder*, the Press Council and media stakeholders<sup>220</sup>. The 2023 Media Pluralism Monitor identifies a low risk for its indicator on journalistic profession, standards and protection, but concludes that the risk in this area is increasing, notably due to attacks on journalists<sup>221</sup>.

**Civil society and journalist associations continue to see potential for further improvement regarding the overall professional environment for journalists.** While strategic lawsuits against public participation targeting journalists are not seen as a major problem, civil society and journalist associations continue to flag that there are some cases of abusive litigation against journalists<sup>222</sup>. In January 2023, Reporters without Borders and the Society for Civil Rights announced that they had filed an appeal to the Federal Constitutional Court against the Federal Intelligence Service Act, in relation to their concerns concerning potential risks of journalists being subject to electronic surveillance measures by intelligence services, in particular when interacting with potential informants<sup>223</sup>. In March 2023, information released by the Federal Government highlighted a relevant volume of remuneration paid by federal ministries to renowned journalists of the public service broadcasters and private media, notably for event moderation, triggering a debate on potential conflicts of interest for these journalists<sup>224</sup>.

#### **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<sup>225</sup> 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*)<sup>226</sup>. The Government, the *Bundesrat* or members of the *Bundestag* can submit legislative proposals<sup>227</sup>. 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.

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<sup>219</sup> Press Council (2023), Annual Report 2022, p. 14; Input from Germany for the 2023 Rule of Law Report, pp. 29-30; Bavarian State Chancellery (2023), State government decides '4-point programme for the improvement of the protection of journalists in Bavaria' (Press release No 170).

<sup>220</sup> Input from Germany for the 2023 Rule of Law Report, p. 29; Information received from the German Press Council in the context of the country visit to Germany.

<sup>221</sup> 2023 Media Pluralism Monitor, p. 11.

<sup>222</sup> dju in ver.di (2023), Civil society alliance warns: EU directive on protection against SLAPP lawsuits under threat; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 20; Information received from the German Union of Journalist, the German Association of Journalists and the Society for Civil Rights in the context of the country visit to Germany.

<sup>223</sup> Society for Civil Rights (2023), GFF and Reporters Without Borders are again filing a constitutional complaint against the BND act – the requirements of the Federal Constitutional Court have been disregarded; Reporters Without Borders (2023), New constitutional complaint against BND act; Input from Germany for the 2023 Rule of Law Report, p. 31.

<sup>224</sup> Bundestag (2023), Reply of the German Federal Government to a Parliamentary Question on payments by federal ministries to journalists from the public service broadcasters and private media (Drucksache 20/5822); TAZ (2023), Linda Zervakis at Republica; T-Online (2023), Is the government too close?.

<sup>225</sup> Art. 20. Basic Law.

<sup>226</sup> Arts. 70 *et seq.*, Basic Law.

<sup>227</sup> Proposals by the *Bundestag* can be submitted by (at least) 5% of its members. In practice, most proposals emanate from the Government.

**There are some improvements regarding stakeholder involvement in policymaking, while the commitment to introduce a digital law-making proposal remains pending.** Following the commitment in the coalition agreement to ensure early consultation of stakeholders noted in the 2022 Rule of Law report<sup>228</sup>, stakeholders generally report improvements in their inclusion in the policy-making process, though the situation is considered to vary based on the responsible Ministry<sup>229</sup>. Especially short consultation periods regarding individual legislative proposals continue to be criticised<sup>230</sup>. A study published in 2023 on the use of expert panels in the preparation of draft legislation shows that such panels appear to be gaining in importance but notes a lack of transparency in the selection of experts and the limited representation of civil society<sup>231</sup>. As regards the Government's commitment to create a digital portal on the law-making process, no updates have been reported.

**On 1 January 2023, Germany had 12 leading judgments of the European Court of Human Rights pending implementation, a decrease of one compared to the previous year<sup>232</sup>.** At that time, Germany's rate of leading judgments from the past 10 years that remained pending was at 43% (compared to 37% in 2022) and the average time that the judgments had been pending implementation was 4 years and 2 months (compared to 3 years and 2 months in 2022)<sup>233</sup>. The oldest leading judgment, pending implementation for 6 years, concerns the access to and the efficient functioning of justice in public trial<sup>234</sup>. On 15 June 2023, the number of leading judgments pending implementation remains 12<sup>235</sup>.

**The German Institute of Human Rights is preparing a follow-up to the recommendations ahead of its re-accreditation in October 2023.** As announced in the coalition agreement<sup>236</sup>, the Institute's financial and human resources were increased, and the Institute considers them adequate to allow it to carry out its tasks<sup>237</sup>. In preparation of its reaccreditation, the Institute, currently accredited with A Status, is preparing clarifications to address the recommendations addressed by the Sub-Committee on accreditation (SCA) of the Global Alliance of Human Rights Institutions (GANHRI) on the Institute's structure,

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<sup>228</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 21.

<sup>229</sup> Contributions from the German Federal Bar, the German Judges' Association, the German Bar Association and ENNHRI (Germany) for the 2023 Rule of Law Report.

<sup>230</sup> German Bar Association, 13 March 2023, Short deadlines render stakeholder consultation pointless.

<sup>231</sup> Otto Brenner Foundation, 2023, Study on the role of civil society in Expert Panels.

<sup>232</sup> 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.

<sup>233</sup> 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 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 4.

<sup>234</sup> Judgment of the European Court of Human Rights of 9 June 2016, *Madaus v. Germany*, 44164/14 pending implementation since 2016.

<sup>235</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>236</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 24.

<sup>237</sup> In 2022, in line with the needs identified by the German Institute for Human Rights, the Federal Parliament increased the Institute's budget by more than EUR 2 million, including 22 additional permanent staff positions, the first substantial funding increase since its establishment in 2001. Information received from the German Institute of Human Rights in the context of the country visit and Contribution from ENNHRI for the 2023 Rule of Law Report, p. 269.

mandate and the applicable legal framework, including through an external legal expertise on possible avenues to strengthen its mandate<sup>238</sup>. As previously reported, the re-accreditation of the Institute has been deferred by the SCA for 18 months until October 2023<sup>239</sup>. In 2022, the Institute had already proposed to have an *ex officio* standing to participate in parliamentary hearings and to provide comments on draft laws with human rights implications<sup>240</sup>. However, the proposal had not been taken up by the relevant authorities<sup>241</sup>. The Institute does not have a horizontal mechanism to monitor implementation of its recommendations by the public authorities but intends to develop this in the future. The follow-up is monitored individually with regard to specific recommendations and has been deemed satisfactory thus far<sup>242</sup>.

**The Government plans to come with a proposal for legislation to clarify the tax-exempt status of non-profit organisations but no concrete progress has yet been made.** The 2022 Rule of Law Report recommended to Germany to ‘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’<sup>243</sup>. In line with the commitment in the coalition agreement<sup>244</sup>, the Government intends to come forward with legislation to clarify the current situation in 2023<sup>245</sup>, but no concrete steps have been taken so far. While the administrative decree adopted in January 2022<sup>246</sup> appears to have brought improvements primarily for civil society organisations (CSOs) engaging in occasional activities that could be considered political<sup>247</sup>, stakeholders note that certain terms in the decree are insufficiently clear and create new challenges in practice<sup>248</sup>. Moreover, CSOs confirm that challenges persist in practice due to the currently applicable legislation beyond the scope of this decree<sup>249</sup> and that CSOs increasingly face threats and legal action by political opponents who aim to prevent them from participating to public debate by threatening a loss of the public-

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<sup>238</sup> Information received from the German Institute of Human Rights in the context of the country visit to Germany and Contribution from ENNHRI for the 2023 Rule of Law Report, p. 268.

<sup>239</sup> The SCA in particular encouraged the German Institute for Human Rights to advocate for amendments to that would strengthen its protection mandate, including its capacity to monitor and have access to places of deprivation of liberty, to access classified documents, and to visit certain facilities. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 24 and Contribution from ENNHRI for the 2023 Rule of Law Report, p. 268.

<sup>240</sup> The Institute may only participate in hearings when invited by a political party. Contribution from ENNHRI for the 2023 Rule of Law Report, p. 266.

<sup>241</sup> Ibid.

<sup>242</sup> Information received from the German Institute of Human Rights in the context of the country visit to Germany.

<sup>243</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 2.

<sup>244</sup> Coalition Agreement 2021-2025, p. 117.

<sup>245</sup> Allianz für Rechtssicherheit, 29 September 2022, Minister Paus announces comprehensive reform of law on charitable organisations in 2023.

<sup>246</sup> Ministry of Finance (2022), Revision of the administrative decree on the Fiscal Code. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Germany, p. 24.

<sup>247</sup> Contribution from Allianz für Rechtssicherheit for the 2023 Rule of Law Report, p. 19.

<sup>248</sup> Allianz für Rechtssicherheit, clarification on ‘political means’ in administrative decree on the Fiscal Code. Also, the decree includes limited examples of activity that is permissible which may lead to an interpretation that not-listed activities are not permissible. Contribution from Civil Liberties Union for Europe (Germany) for the 2023 Rule of Law Report, p. 19.

<sup>249</sup> Contributions from European Civil Liberties Union for Europe (Germany), p. 19, European Civic Forum – Germany pp.4-5, ENNHRI (Germany) pp. 270-272 and Allianz für Rechtssicherheit, p. 19, for the 2023 Rule of Law Report. Franet (2023), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Germany, pp. 4-5..

benefit status<sup>250</sup>. A representative survey of CSOs published in March 2023 shows that 5% of CSOs indicate that they would like to be more politically active but refrain out of fear of losing their public benefit status<sup>251</sup>. Council of Europe recommendations underline that any form of public support for NGOs should be governed by clear and objective criteria<sup>252</sup>. As no concrete reform has been taken forward and challenges in practice persist, no progress was yet made on the implementation of the 2022 recommendation so far.

**A new draft ‘democracy promotion’ law aims to provide more long-term, age independent and more needs-based federal funding to civil society projects on democracy, pluralism and political education.** Civil society space continues to be considered as ‘open’<sup>253</sup>, though stakeholders note certain instances of attacks against civil society and activists both online and physically, for example in the context of climate-related protests<sup>254</sup>. On 14 December 2022, the Government presented a draft ‘democracy promotion law’<sup>255</sup>, which aims to provide more long-term project funding in the fields of democracy, promoting societal pluralism, extremism prevention and political education. It will create an explicit federal mandate to support such projects if they are of nationwide interest. Currently, the Federal Government can often only fund pilot projects on a yearly basis and for youth-related projects. The volume covered by the federal funding programme ‘*Demokratie Leben*’ has also been increased to EUR 182 million<sup>256</sup>. Stakeholders have generally welcomed the draft law as providing more sustainable funding<sup>257</sup>, though they have criticised that benefitting from the public benefit status for tax exemptions is a condition to receive funding, given the persisting challenges in this respect<sup>258</sup>. The law foresees that CSOs which have not yet received this designation, can prove through other means that their goals are generally compatible with the public benefit status<sup>259</sup>. The law is now under consideration in Parliament. As a separate initiative, the commitment in the coalition agreement for a national engagement strategy<sup>260</sup> will be taken forward by the Federal Foundation for Engagement and the national network of voluntary associations, who will launch a participatory process for elaborating such a strategy<sup>261</sup>.

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<sup>250</sup> Contribution from Civil Liberties Union for Europe (Germany) for the 2023 Rule of Law Report, p. 19.

<sup>251</sup> These figures are in particular high for organisations active in the field of environmental issues (11%), international solidarity (10%) and media (9%). ZivizSurvey 2023: Civil Society in times of crisis: politically active with weakened foundations.

<sup>252</sup> 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.

<sup>253</sup> Rating given by Civicus, Germany. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>254</sup> Contribution from European Civic Forum (Germany) for the 2023 Rule of Law Report, p. 6 and contribution from Civil Liberties Union for Europe (Germany), for the 2023 Rule of Law Report, pp. 18-22.

<sup>255</sup> Draft law to strengthen measures to promote democracy, shape diversity, prevent extremism and for political education.

<sup>256</sup> Federal Budget 2023 – Ministry for Family, Seniors, Women and Youth, p. 19.

<sup>257</sup> Contribution from the European Network of National Human Rights Institutions (Germany) for the 2023 Rule of Law Report, p. 13-14 and Contribution from European Civic Forum (Germany) for the 2023 Rule of Law Report, p. 10.

<sup>258</sup> Contribution from Allianz für Rechtssicherheit for the 2023 Rule of Law Report, p. 20.

<sup>259</sup> §5 point 2 of the draft law.

<sup>260</sup> Coalition Agreement 2021-2025, p. 117.

<sup>261</sup> Information received from Bundesnetzwerk Bürgerschaftliches Engagement in the context of the country visit to Germany.

## Annex I: List of sources in alphabetical order\*

\* The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).

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## **Annex II: Country visit to Germany**

The Commission services held virtual meetings in February and March 2023 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 Court of Justice
- 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
- Press Council
- Prosecution Service
- Transparency International Germany
- ZDF

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

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action 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
- Front Line Defenders
- ILGA Europe

- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU