



Does the rule of law have a price tag?

Anja Wyrobek, DAV Brussels ([Anwaltsblatt 2020, 661](#))

On 30 September 2020, the European Commission published its long-awaited first Rule of Law Report. It is accompanied by 27 country-specific chapters which describe the situations in each of the EU's member states. The German Bar Association actively contributed to the German chapter in order to draw attention to the situation of the legal profession in Germany. The preparatory work for the Rule of Law Report 2021 has already begun. This next report will explicitly include the situation of the legal profession as a concrete item, following the DAV's appeal to Justice Commissioner Reynders. After all, it is the legal profession in particular which guarantees access to justice, a pillar of the rule of law and an essential part of the judicial system.

The report is intended to be a preventive instrument, as well as to stimulate an inclusive debate and to kick-start a culture of the rule of law throughout the EU. It focuses on four areas in each member state: the judicial system, the fight against corruption, media freedom and pluralism, and institutional checks and balances. Overall, Germany has received positive marks in these areas. However, it is well known that there are other EU members where governmental actions massively encroach on and violate the fundamental rights of citizens, where judicial independence is no longer guaranteed and where the free exercise of the legal profession is also under attack. This is illustrated, for example, by a pending Polish CJEU case (C-55/20), which specifically addresses the issue of disciplinary proceedings for lawyers and the independence of the courts.

However, looking at the Rule of Law Report, the reader will fail to find any recommendations or sanctions. The first way that EU institutions are currently trying to prevent breaches of the rule of law is to refer the infringing member states to the CJEU, and the other is the persistent and almost toothless Article 7 TEU procedure which has long been stuck in a deadlocked Council.

One may ask how effective a judgment of the European Court of Justice is if its authority is not recognised. Furthermore, what good does the Article 7 procedure do if blocking minorities in the Council paralyse the procedure? A possible new instrument for reprimands could be the multi-annual EU budget. Negotiations have been dragging on since the summer, and opinions on the link between the rule of law and the disbursement of EU funds tend to differ sharply from country to country. Without an agreement on the financial framework, including the recovery fund to address the economic consequences of the coronavirus pandemic, the hardest-hit countries would be left alone to deal with their economic crises. The agreement requires the votes of Poland and Hungary in the Council; both countries, however, do not need the funds as much as other, more affected, member states in the EU.

The question of whether commitment to the rule of law comes with a price tag thus still remains an open one.