



BUNDESRECHTSANWALTSKAMMER

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Konsultation der Europäischen Kommission über ihre Leitlinien über Hochrisiko-KI

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Die Bundesrechtsanwaltskammer ist die Dachorganisation der anwaltlichen Selbstverwaltung. Sie vertritt die Interessen der 28 Rechtsanwaltskammern und damit der gesamten Anwaltschaft der Bundesrepublik Deutschland mit rund 167.500 Rechtsanwältinnen und Rechtsanwälten gegenüber Behörden, Gerichten und Organisationen – auf nationaler, europäischer und internationaler Ebene.

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Stellungnahme

Die Bundesrechtsanwaltskammer nimmt zu den folgenden Randnummern der Leitlinien Stellung in englischer Sprache:

Para. 429 (ADR)

According to the last indent of paragraph 429, ADR bodies may also include (...) professional disciplinary or supervisory bodies (...) “which often operate ADR mechanisms to address disputes or complaints within professional practice.” In this regard, the following should be noted:

As the CJEU has stated in C-55/20 (para 61), professional bodies including those with jurisdiction over lawyers may constitute courts or tribunals within the meaning of Art 267 TFEU:

Moreover, the Court has, on several occasions, already held that professional bodies, in particular those with jurisdiction over lawyers, may constitute courts or tribunals within the meaning of Article 267 TFEU provided that those bodies satisfy the requirements laid down in the case-law referred to in paragraphs 54 and 55 above (see, inter alia, judgments of 22 December 2010, Koller, C-118/09, EU:C:2010:805, paragraphs 22 and 23, and of 17 July 2014, Torresi, C-58/13 and C-59/13, EU:C:2014:2088, paragraphs 17, 19 and 30).

Hence, when such a body issues a binding decision intended to sanction a lawyer's professional misconduct or to ensure compliance with professional standards, it is undoubtedly to be regarded as a “judicial authority” within the meaning of Annex III, No. 8, of the AI Regulation.

To the extent that professional bodies with jurisdiction over lawyers offer formal mediation procedures for the resolution of disputes – such as the German Lawyer's Arbitration Board in the meaning of Section 191f German Federal Lawyers Act (“Schlichtungsstelle der Rechtsanwaltschaft”) –, such activities are clearly to be regarded as ADR within the meaning of Annex III, No. 8, of the AI Regulation.

However, in Germany, the bars themselves have a statutory mandate to mediate, upon request, in disputes (a) among members of the bar association and (b) between members of the bar association and their clients; this includes the authority to propose settlement terms (Section 73(2)(2) and (3) of the Federal Lawyers' Act (BRAO)). Such conciliation efforts are generally very informal; in particular, the bars do not function as mediation bodies within the meaning of the EU Mediation Directive (2008/52/EC). In this respect, it seems doubtful whether such activities can be classified as ADR within the meaning of Annex III, No. 8, of the KI Regulation.

Paras 106, 197 (preparatory task)

BRAC would like to stress that “preparatory tasks” must be interpreted narrowly as the guidelines point out due to the risk of influencing the final decision, even when seemingly marginal.

Paras 363 to 365 (evaluation of reliability of evidence)

AI systems used to evaluate the reliability of evidence must be subject to strict safeguards including effective human oversight, due to their potential influence on the proceedings.

Paras 366 to 368 (concerning AI systems assessing offending or reoffending of concrete person(s))

BRAK reiterates its call for strict safeguards and effective oversight where AI systems assess offending or reoffending of concrete person(s) due to their potential impact on fundamental rights. The same applies to Deepfakes and furthermore to the use of polygraphs. At present the AI Act only entails transparency obligations for deepfakes which produces an enormous risk also for judicial systems with significant implications for the right to a fair trial, equality of arms, the rights of defence and the presumption of innocence.

Para 416 (AI systems used by parties and legal representatives)

BRAK welcomes the clarification that AI systems intended for use by parties and their legal representatives do not fall within the scope of point 8(a) of Annex III, as parties and their representatives are not acting ‘on behalf of a judicial authority’.”
