
Practical Guide for EU, EEA and Swiss Lawyers on Service and Establishment

GERMANY

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If an error is identified, please bring it to the attention of the CCBE which will correct it, where appropriate.

Structure	Information received
1. Establishment	
1.1. Registration with Host Bar	<p>Register with the regional Bar where the intended practice is located (§ 2 Law regulating the activity of European lawyers in Germany - EuRAG). There are 27 regional Bars and the Bar at the Federal Supreme Court of Justice in Germany. In order to be admitted to a regional Bar, you need to provide different documents which may vary depending on the regional Bar (§ 3 EuRAG). The following documents are required by all regional Bars:</p> <ul style="list-style-type: none">• completed application form (which you receive from the regional Bar);• a certificate issued by the competent authority in your home State certifying your membership of the lawyer's profession as well as a certified translation of this certificate. The German regional Bar may require that, when presented, this certificate must not be more than three months old.• an evidence of existing professional indemnity insurance (§ 4 EuRAG in conjunction with § 51 Federal Lawyers' Act – BRAO, § 7 EuRAG);• a proof of payment of the registration fee which varies depending on the regional Bar between approx. 100€-450€;• the yearly membership fee also varies depending on the regional Bar between approx. 200€-450€;
1.2. Title	You must practice under your home title (§ 5 EuRAG).
1.3. Salaried practice	A lawyer can be employed by another lawyer, by a law firm or - under certain circumstances and with different rights and privileges - by a company as an in-house-lawyer, the so-called <i>Syndikusrechtsanwalt</i> (§§ 46-46c BRAO).

1.4. Legal Form and Shareholding	Must correspond with the core principles laid down for German Rechtsanwälte: MDP with and participation of certain professions is permitted when they jointly practise their professions within the framework of their own professional rights (patent attorneys, tax consultants (Steuerberater), tax agents (Steuerbevollmächtigte), auditors and certified accountants) (§ 59a BRAO). For the joint practice any legal form with the exception of a limited commercial partnership (Kommanditgesellschaft) can be chosen (§ 59c BRAO).
1.5. Joint Practice	Any form of professional association as well as sharing an office is permitted within the above-mentioned limitations (§ 59a BRAO).
1.6. Areas of Activity	Representation before all courts and administrative authorities; advice in the law of your home and host country as well as European and international law (§ 2 EuRAG in conjunction with §§ 1-3 BRAO).
1.7. Practice Rules	No restrictions concerning the representation and the defense of clients before courts and authorities, with the exception of civil matter cases before the Federal Supreme Court of Justice which require the assignment of a lawyer who is admitted to the corresponding Bar (§ 6 EuRAG in conjunction with § 172 BRAO).
1.8. Principle of Double Deontology	As an established lawyer, you are subject to the regulations not only of your home Bar but also of your host Bar. In Germany you are thus subject to the statutory provisions of the German Federal Lawyers' Act (- BRAO) and to the Lawyers Professional Code of Conduct (BORA).
1.9. Disciplinary proceedings	As an established lawyer, you are subject to the rules and regulations and thus to the disciplinary supervision of your regional Bar (§ 6 para. 1 EuRAG in conjunction with § 73 para. 2 n°4 BRAO). Disciplinary matters are dealt with in the first instance by the regional Bars (§ 74 BRAO). The legislator has also provided for a formal complaint procedure and proceedings before special disciplinary courts (§ 113 subs. BRAO) consisting of the <i>Anwaltsgericht</i> (Lawyers' Disciplinary Court), the <i>Anwaltsgerichtshof</i> (Higher Lawyers' Court) and the <i>Senat für Anwaltssachen beim Bundesgerichtshof</i> (Senate for matters concerning the Legal Profession at the Federal Supreme Court). All decisions relating to the conduct or discipline of lawyers may be referred to these courts. Lawyers against whom charges are brought, may appeal to these courts.
1.10. Insurance (professional indemnity insurance, social security, etc.)	<ul style="list-style-type: none"> • Professional Indemnity Insurance: you must comply with the same rules as German Rechtsanwälte (§ 4 EuRAG in conjunction with § 51 BRAO, § 7 EuRAG): the professional indemnity insurance must cover your potential liability for financial loss resulting from your professional practice. The insurance must also cover financial loss for which you are liable under § 278 or § 831 of the German Civil Code. The insurance must have a minimum coverage of € 250,000.00 for each case of loss; the benefits paid out by the insurer for all losses caused within an insurance year may be limited to four times the minimum coverage. You can contract an insurance or guarantee either in Germany or in your home country. However, in the latter case, you have to prove to the regional Bar that the insurance or guarantee is equal in terms of the conditions and the extent of coverage as described above (§ 7 EuRAG). If there is no equivalence, you have to contract additional insurance or guarantee in order to provide the protection which equally satisfies the requirements set out above. Any supporting documents which are not originally issued in German shall be presented with a certified translation. • Social security: you may request a waiver of the payment to the pension scheme of your corresponding regional Bar in Germany if you continue to contribute to your home pension scheme (cf. statutes of the respective pension fund of your

	regional Bar). The request has to be made in writing in the first six months after the admission to the regional Bar in Germany and you have to prove your admission to the pension scheme in your home country.
1.11. Fees	German rules apply. In general, a lawyer and a client can agree on a fee (§ 49b BRAO, §§ 3a-4a Lawyers' Remuneration Act – RVG). The agreement has to comply with civil and professional law; otherwise the German Lawyers' Remuneration Act (RVG) applies. Concerning court proceedings, it is in general prohibited to agree with the client on lower fees than provided for in the RVG (§ 49b BRAO).
1.12. Continuing Legal Education	In general, required (§ 43a para. 6 BRAO). In particular, a Rechtsanwalt with the title of a "Bar-approved specialised lawyer" (Fachanwalt) is required to participate in 15 hours of continuing legal education per year, out of which 5 hours can be completed by self-education under the condition that an exam for the self-study is provided (§ 15 Professional Practice Rules for Bar-approved specialised lawyers – FAO).
1.13. Bar	When admitted, you become a member of the regional Bar. You are thus eligible to a representative body of the regional or the Federal Bar (§ 6 EuRAG in conjunction with §§ 60 para. 2, 64, 65, 78 BRAO) .
1.14. Conditions for the Acquisition of the Title of a 'National Lawyer'	Three years of practice under home State professional title (§ 11 EuRAG) or the recognition of professional qualifications and possibly an Aptitude Test (§ 16 EuRAG). For more details, see section 3.
2. Services	
2.1. Under home title & representation before courts	<ul style="list-style-type: none"> • Legal services under your home title – permitted before courts and administrative authorities (§ 25 para. 1 EuRAG); • Upon request, you have to supply the competent regional Bar (different regional Bars are assigned as competent, depending on the State where the European lawyer providing services is established - § 32 para. 4 EuRAG) or the court or authority before which you appear, with proof that you are entitled to exercise the profession in your home State (§ 26 para. 2 EuRAG). • Where the representation and/or defense before a court or an administrative authority is reserved to lawyers (i.e. claim exceeding € 5,000.00 or criminal proceeding before the Landgericht), you need to work in conjunction with a German Rechtsanwalt (Einvernehmensanwalt). A proof of this work in conjunction has to be submitted in writing when the first step before the court or the administrative authority is taken (§§ 28-30 EuRAG). • If you have no address for service in Germany, you should designate a Rechtsanwalt to be authorized to accept the service of documents as soon as you start acting in proceedings before courts or administrative authorities (§ 31 EuRAG). • Obligation to take out a professional indemnity insurance which covers your potential liability for financial loss resulting from your temporary professional practice in Germany (§ 27 para. 3 EuRAG). If taking out an insurance is not possible or not reasonable you have to inform your client hereof in writing and before accepting the mandate.

2.2. Deontology	When providing legal services under your home title on a temporary basis in Germany, you have the same rights and duties as a German Rechtsanwalt, insofar as these are not related to Bar membership or to the lawyer's office (§ 27 para. 1 EuRAG). You are also subject to the disciplinary supervision of the competent regional Bar (§ 32 EuRAG).
2.3. Fees	German rules apply, in general lawyer and client can agree on a fee (cf. above point 1.11). However, the agreement has to comply with civil and professional law; otherwise the Lawyers' Remuneration Act (RVG) apply. Concerning court proceedings, it is in general prohibited to agree with the client on lower fees than provided for in the RVG.
3. Acquisition of the national lawyer's title	
3.1. Via Establishment Directive	You have to prove an effective and regular activity as established European lawyer in Germany for a period of at least three years, practicing German law including EU law for three years or less, as well as an interview in order to verify if the applicant has sufficient practice with regard to German law (§ 11 EuRAG). You have to provide the respective regional Bar with proof as to the number of matters you have dealt with pertaining to German law and their nature as well as the duration of his activity (§ 12 para. 1 BRAO). The regional Bar may request to provide, orally or in writing, further detail on the information and documentation supplied. As evidence proving activity in legal matters pertaining to German law, a list of cases has to be submitted which must include the following information: reference number, subject matter, duration of activity, the nature and scope of the activity, status of the matter (§ 12 para. 2 BRAO). Upon request of the regional Bar, samples of the applicant's work, in which all data has been rendered anonymous, have to be presented.
3.2. Via Professional Qualification Directive	<p>Another way to acquire the title of a <i>Rechtsanwalt</i> is the recognition of your professional qualifications (Aptitude Test). You have to prove that your professional qualifications are equivalent to the qualifications of a German Rechtsanwalt (§ 16 EuRAG). The competent Judicial Examination Office decides on the request and may ask you to participate in a training program or pass an aptitude test if your qualifications are not sufficient (§ 16a EuRAG). You can, upon decision of the Examination Office, be exempt from parts of the aptitude test (§ 21 para. 2 EuRAG).</p> <p>The aptitude test consists of a written and oral test (§ 21 EuRAG). The examination is taken in German. The written test consists of two papers written under supervision. One paper relates to civil law, the other to the optional subject chosen by you (§ 20 EuRAG). You are only admitted to the oral test, if at least one written test paper satisfies the requirements. The oral test consists of a presentation and an interview. The oral test covers the rules governing the professional conduct of lawyers, the optional subject, in which you have not taken a written examination and, if one of the written examinations is unsatisfactory, the oral test will also cover the subject of that examination.</p> <p>Contact points: in Berlin – Joint Judicial Examination Office for the joint examination of candidates from the Länder (German federal states) Berlin, Brandenburg, The Free Hanseatic City of Bremen, the Free and Hanseatic City of Hamburg, Mecklenburg-Western Pomerania, Lower Saxony, Saxony-Anhalt and Schleswig-Holstein; in Düsseldorf - Joint Judicial Examination Office for the joint examination of candidates from the Länder Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Thüringia; in Stuttgart – Joint Judicial Examination Office at the Ministry of Justice of Baden-Wuerttemberg for the joint judicial examination for the Länder Baden-Wuerttemberg, Bavaria and Saxony</p>
4. Practicalities	

<p>4.1. Practical information</p>	<ul style="list-style-type: none"> • You can find information on the court system and further links to addresses and contacts of all German courts and public prosecutor's offices at: https://e-justice.europa.eu and here • Before German courts, lawyers are normally required to wear a specific robe in the courtroom with the exception for cases in civil matters before a local District Court (<i>Amtsgericht</i>). • Depending on the court, there are certain seating orders in the courtroom. You either sit with your client on the left or the right side of the room (from the judge's point of view). You should either ask the judge or the lawyer of the other party if you do not know where to sit. • You are required to stand up when the judge enters the courtroom.
<p>4.2. National organisation</p>	<p>The governance and legal framework of the legal profession must be viewed taking into account the fact that the State has delegated certain powers of self-regulation to the profession. The professional bodies so entrusted are the Bars.</p> <p>The self-regulation of the legal profession is organized according to the constitutional principle of separation of powers with independent legislative, executive and judiciary institutions. The German Federal Bar (<i>Bundesrechtsanwaltskammer</i> - BRAK) represents the interests of the legal profession as such; the regional Bars (<i>Rechtsanwaltskammern</i>) regulate the lawyers. The Lawyers' Parliament (Satzungsversammlung) drafts and adopts the code of conduct of the legal profession; the judiciary is exercised by special courts.</p> <p>In Germany, every lawyer must be a member of one of the 27 regional Bars or the Bar at the Federal Supreme Court which are public bodies supervised by the relevant Ministry of Justice with respect to the legality (not suitability) of their conduct.</p> <p>The BRAK is the umbrella organisation of the regional Bars and thus acts as a central organization for the legal profession, representing all lawyers in Germany (around 164,500).</p> <p>Additionally, a lawyer can become a member of the German Bar Association (Deutscher Anwaltverein – DAV) on a voluntary basis. The DAV is an independent civil law body, which currently counts 64,500 members, organised in 256 local bar associations. The DAV represents the interests of the legal profession as the lawyer of lawyers in all economic, public and professional interests as well as policy related and political questions related to the rule of law and the tasks lawyers fulfil within the rule of law. Any admitted lawyer may become a member of the respective local bar association</p> <p>The German Federal Bar is not responsible for the professional supervision of individual lawyers. This responsibility is assumed by the regional Bars. The duties of the German Federal Bar include the following (§ 177 BRAO):</p> <ol style="list-style-type: none"> 1. in matters that concern all regional Bars, determining the opinions of the individual regional Bars and establishing the majority opinion by way of joint declaration; 2. in matters that concern all regional Bars, to present the opinion of the German Federal Bar to all relevant courts and authorities; 3. to represent the individual regional Bars in dealings with authorities and organizations; 4. to render an expert opinion required by a federal legislative authority or body or the Federal High Court of Justice (Bundesgerichtshof); 5. to promote the professional development of lawyers;

	6. to promote the electronic communication between the lawyers and courts, authorities and other third parties.
4.3. Reference to national legislation with other languages available + links	<p>Law regulating the activity of European lawyers in Germany (EuRAG) – DE, EN (older version)</p> <p>The Federal Lawyers' Act (BRAO) – DE, EN (older version)</p> <p>Lawyers Professional Code of Conduct (BORA) - DE, EN</p> <p>Professional Practice Rules for Bar-approved specialised lawyers (FAO) - DE</p>
4.4. Reference to existing national guides	N/A
4.5. Reference to services available for lawyers in that jurisdiction	<p>Lawyers from the EU, EEA or Switzerland have access to the electronic communication system for lawyers (<i>elektronisches Anwaltspostfach</i>) (§ 6 para 1 EuRAG in conjunction with 31a BRAO, § 27a EuRAG). You can find more information here (https://bea.brak.de/).</p>
4.6. Contact information	<p>German Federal Bar: www.brak.de</p> <p>Littenstraße 9 10179 Berlin Tel.: +49 (30) 28 49 39 - 0 Telefax: +49 (30) 28 49 39 - 11 E-Mail: zentrale@brak.de</p> <p>German Bar Association: www.anwaltverein.de</p> <p>Littenstraße 11 10179 Berlin Tel.: +49 (30) 72 61 52 - 0 Telefax: +49 (30) 72 61 52 - 190 E-Mail: service@anwaltverein.de</p>