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ADMINISTRATIVE DIGITISATION FOR BUSINESS - HOW BUSINESS-  
FRIENDLY IS GERMAN DIGITISATION LAW?

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## Abstract

The digital transformation of public administration is increasingly dominating the working agenda of legislators in the multi-level system and public authorities. Pursuant to Section 1 of the Online Access Act (OZG), the federal and state governments were obliged to make their administrative services digitally accessible by the end of 2022, whereby the municipalities were predominantly responsible for the digital implementation of the applications defined in the public administration service catalogue (LeiKa). Of the total of around 5,000 services that are potentially relevant for local authorities, around 1,300 services are related to companies. This means that not only private individuals are addressees and customers of the digital administration services, but also companies in particular. In turn, the business-friendliness of digital regulations is a decisive factor in attracting and retaining companies in a location. The Confederation of German Employers' Associations has criticised in a position paper that administrative digitalization in Germany is only in the middle of the European field and that German companies want an efficient and digital administration. Above all, the modernisation of registers, the development of a business platform and the efficient implementation of the OZG in the form of an OZG 2.0 are the top priorities for entrepreneurs. The report examines the overarching research question: "How business-friendly is German digitalisation law in the area of services of general interest? The report presents current findings on this topic and addresses both the scientific community and administrative practitioners in public administration.

## 1. Research subject and focus of the research work

### 1.1. Subject of the research

The state government of Hesse, selected here as an example case, has set itself the goal of making Hesse the first federal state to offer a statutory digital check. In future, laws, legal ordinances and funding guidelines are to be examined for their digitalisation potential when they are created or revised. In its digitalisation strategy "Digital Administration 4.0", the state government has also identified companies as important addressees of the digital regulations to be created. However, the strategy remains unclear as to which specific measures are intended to make digital law more business-friendly.

### 1.2. Focus of the research work

Academia has not yet focused on the regulations of administrative digital law, nor has it analysed them in depth. The following research questions therefore arise:

- What legal regulations exist in the law on digital services of general interest that relate to companies?
- What content and topics are regulated in the law on digital services of general interest?
- Which areas have not yet been standardised?

- To what extent do the legal framework conditions lead to a continuous and seamless interaction between law and technology in the implementation of digitalisation law (so-called "technology-law continuum")?
- How do these legal regulations contribute to the successful implementation of the OZG and eGovernment law as a whole?
- What is the quality of the new regulations and the resulting offerings, i.e. are only analogue offerings being translated into digital form or are processes being rethought and further developed on an all-time basis?
- What recommendations for action can be given to public administrations and legislators based on the findings so that their digitalisation offerings can be made even more business-friendly?

In particular, by analysing this topic and developing concrete recommendations for action for administrations, a significant contribution can be made to practice-university-practice transfer. In this respect, this report forms the basis for further profile-building research work that builds on one another.<sup>1</sup>

### 1.3. Structuring the research project

As part of a systematic research and evaluation of the objectives of the research project, the existing legal regulations were first analysed and compared with the current scientific discourse. Based on this, the aforementioned questions were addressed.

The planning of the research project was organised as follows:

#### *Research part 1*

- Planning systematic research work
- Carrying out literature and source research
- Preparation of the research results

#### *Research part 2*

- Systematic analysis of the research results.

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<sup>1</sup> This research and working report is a partially expanded English translation of a German essay by the two authors, which is to be published in the conference proceedings "Zukunft der Daseinsvorsorge in der öffentlichen Verwaltung". This paper is intended for an audience that does not speak German in order to share the research results with the international community.

- Presentation and categorisation of company-related legal regulations
- Development of recommendations for action

The project was scheduled to run for 8 months. The research results were compiled in a research report which, in addition to the research and research results, also contains impulses for further research. The two researchers, Prof Dr Högbe and Prof Dr Neumann, shared the work in this research project equally.

The results can be used directly in administrative research and teaching. In particular, research findings can also be used directly for administrative practice as a source of inspiration and for reflection. The intended research project offers potential for further development in teaching in particular:

(1) To update and further develop the range of courses on offer by providing targeted impetus for the further development of the relevant curricula or to offer project, elective and other specialised courses.

(2) By realising a special practical relevance in teaching by using findings from this research project in a targeted manner with practical cases for thematic competence building for the implementation of digitization strategies on site and for raising awareness of the possibilities and necessities of digital transformation as a result of digitization strategies.

The findings from this research project are therefore suitable for use in administrative practice as well as in teaching; they address both the management and administrator level in public administration and those responsible for digitisation on site as well as students and lecturers, e.g. at universities of applied sciences for public administration as a whole.

## 2. Realisation of the research project

### 2.1. Concretisation of the initial problem

In German-speaking countries, the term "Daseinsvorsorge"<sup>2</sup> is used to refer to the fact that the state provides goods and services that are necessary for society's existence. However, there has always been controversy as to which state services should be covered by services of general interest.<sup>3</sup> Traditional areas of services of general interest include transport, waste disposal, energy and water supply. Increasingly, the term "digital services of general interest" is being used in academic discourse.<sup>4</sup> This conceptual expansion is intended to show that the range of services provided by public administration is subject to change in the digital age and that society is placing new demands on state services.<sup>5</sup>

In the Digital Economy and Society Index (DESI 2022), which is compiled by the EU Commission, the digital public services of the German administration are also one of the four sub-areas used to measure information technology progress in the EU.<sup>6</sup>

This shows that the economy and society expect digital services from services of general interest. However, Germany currently only ranks 13th among the 27 EU member states in this index.<sup>7</sup> The worst score is achieved in the category of digital public services, where Germany only ranks 18<sup>th</sup>.<sup>8</sup>

In the discussion about the digitalisation of German administration, it is often the case that only the perspective of citizens is taken and, as a result, the government services to be offered are narrowed down to this group. Such a perspective overlooks the fact that it is not only private individuals who are the recipients of digital administrative services, but also companies in particular. Of the 4,952 requirements set out in the public administration service catalogue (LeiKa), around 1,300 LeiKa services are related to companies (G2B and G2B/C).

LeiKa services municipal (potential)	Municipal LeiKa	LeiKa services differentiated according to target groups of administrative services	LeiKa services differentiated according to the type of receipt of the administrative service
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<sup>2</sup> European law uses the term services of general economic interest (SGEI) (see Art. 106 para. 2 sentence 1 TFEU). This term certainly overlaps with services of general interest, in particular in the case of support services provided by public companies. However, it cannot be equated with the concept of services of general interest because, unlike services of general interest, the SGEI concept has a competition law focus.

<sup>3</sup> Knauff, *Der Gewährleistungsstaat*, p. 22.

<sup>4</sup> Luch/Schulze, *MMR* 2009, p. 19 ff.; Lühr (ed.), *Digitale Daseinsvorsorge*, Bremen 2020; Härtel, *LKV* 2019, p. 50; Schulz, in: Klenk/Nullmeier/Wewer (eds.), *Handbuch Digitalisierung in Staat und Verwaltung*, p. 565 ff.

<sup>5</sup> Luch/Schulze, *MMR* 2009, p. 19.

<sup>6</sup> The other three areas are human capital, connectivity and the integration of digital technology.

<sup>7</sup> EU Commission, *Digital Economy and Society Index (DESI) 2022*, <https://digital-strategy.ec.europa.eu/en/policies/desi-germany>, accessed 27 March 2024, p. 3. At the time of writing, the 2022 report was the most recent version.

<sup>8</sup> Cf. *ibid.*, p. 18.

	services (case study)						
		G2B	G2B/C	G2C	Message	Form	Bundle
4.952	<b>2.799</b>	594	727	1.478	138	1.948	713
		<b>2.799</b>			<b>2.799</b>		

Table 1: Leika services with a company reference<sup>9</sup>

However, the business-friendliness of digital administrative services is a decisive factor in attracting and retaining companies in a location. Currently, the digitisation of previously analogue services of general interest, the development of a central business platform and the efficient implementation of an amended Online Access Act (OZG) are the top priorities for companies.<sup>10</sup> Based on these initial problems, interdisciplinary questions from section 3.4 will be addressed from an economic and legal perspective.

## 2.2. Electronic services and digital services of general interest

The idea of services of general interest can be traced back to G. W. F. Hegel, Lorenz von Stein, Karl Jaspers and, above all, Ernst Forsthoff.<sup>11</sup> Their aim was to show that the state is not only responsible for intervention but also for the administration of services. Since they established the concept of services of general interest, there has been a controversial debate as to whether the range of state services should be reduced to a core area or whether the necessary state goods and services should be expanded due to technical and social progress.<sup>12</sup>

## 2.3. Legal regulations and digital services of general interest

The question arises as to whether and how the concept of digital services of general interest has been reflected in the legal provisions. If one analyses the central legal norms that govern the digitisation of administration in the German federal state, it is noticeable that neither the OZG nor the federal or state e-government laws use the term "digital services of general interest". The municipal ordinances of the federal states also continue to use only the classic term "services of general interest" without adding digital references.<sup>13</sup> Only the Act on

<sup>9</sup> Högrebe, HMD Praxis der Wirtschaftsinformatik, 2021, Table 3, p. 1062.

<sup>10</sup> BDA, Digitalisierung in öffentlicher Verwaltung und Sozialversicherungen - notwendige Schritte für einen modernen Wirtschaftsstandort Deutschland, <https://arbeitgeber.de/wp-content/uploads/2022/07/bda-arbeitgeber-Digitalisierung-in-oeffentlicher-Verwaltung-und-Sozialversicherungen-2022-07-01.pdf>, accessed 27.03.2024, p. 1 f.; Guckelberger, GewArch 2019, p. 461.

<sup>11</sup> For details see: Knauff, Der Gewährleistungsstaat, p. 22 ff.

<sup>12</sup> Luch/Schulze, MMR 2009, p. 19.

<sup>13</sup> See e.g. Baden-Württemberg (§ 102 Para. 1 No. 3 GemO), Bavaria (Art. 87 Para. 1 No. 4 BayGO), Thuringia (§ 71 Para. 2 No. 4 KO).



Digitalisation in the Free State of Bavaria (BayDiG), which came into force on 1 August 2022, explicitly mentions the term digital services of general interest in Art. 2 sentence 2 no. 3 BayDiG and in Art. 4 BayDiG.<sup>14</sup> The aim of the new BayDiG is to reorganise and promote digitalization in Bavaria in accordance with its Art. 2 p. 1 BayDiG. A key innovation of this law is the introduction of digital rights and guarantees (see Art. 8-15 BayDiG), including the establishment of user-friendliness as a legal principle (Art. 3 para. 5 BayDiG).<sup>15</sup>

According to Art. 3 Para. 5 BayDiG, the Bavarian authorities are to "consider usability, user experience and user-friendliness when acquiring new software and give equal priority to the user's perspective and economic efficiency". As a result, the digital services of general interest standardised in Art. 2 sentence 2 no. 3 BayDiG and Art. 4 BayDiG play a central role in raising digitalisation between the administration, companies and citizens to a higher level of development. However, neither the law itself nor the Bavarian Digital Ordinance, which was issued on the basis of Art. 57 BayDiG, sets out what the Bavarian legislator specifically understands by the term "digital services of general interest"<sup>16</sup>. Even the relevant explanatory memorandum to the BayDiG only states that digital services of general interest "are not limited to offering previously "analogue" state services (from daycare registration to building permits) also or primarily in digital form. Rather, it is also important to use the potential of digital technologies to modernise and make public supply and network services more efficient"<sup>17</sup>. Art. 2 sentence 2 no. 3 BayDiG stipulates that digital services of general interest also include the provision and safeguarding of digital networks and infrastructures. The explanatory memorandum to the law states that this includes not only traditional broadband networks, but also digitally controlled supply, smart city and smart region infrastructures, Wi-Fi hotspots and intelligent energy networks, which are to be continuously developed based on the state of the art.<sup>18</sup> Although the legal text in Art. 2 sentence 2 no. 4, 5 BayDiG does not use the term "digital services of general interest", it can be seen from the explanatory memorandum that the Bavarian legislator also assigns digital mobility and transport concepts (no. 4) as well as the digitalization of health and care (no. 5) to digital services of general interest.<sup>19</sup> Art. 4 para. 1 BayDiG also very generally stipulates that the Bavarian regional authorities and other legal entities under public law under the supervision of the state should offer suitable administrative services and other public services within the scope of their responsibilities digitally via publicly accessible networks. Art. 4 para. 3 sentence 3 BayDiG only stipulates that the tasks, competences and responsibilities of the municipalities should not be changed by this provision. This is probably under the aspect of connectivity in order to counteract financial claims of the municipalities against the state for the provision of services of general interest.

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<sup>14</sup> In accordance with Art. 59 Para. 4 BayDiG, the Act on Digitisation in Bavaria replaces the Bavarian E-Government Act.

<sup>15</sup> Heckmann/Rachut, jurisPR-ITR 15/2023, Editorial.

<sup>16</sup> LT-Drs. Bay. No. 18/19572.

<sup>17</sup> Cf. *ibid.*, p. 44.

<sup>18</sup> Cf. *ibid.*, p. 56 f.

<sup>19</sup> Cf. *ibid.*, p. 57.

## 2.4. Digital services of general interest and range of services

The Bavarian legislator is the only one to use the term "digital services of general interest". At the same time, the term used is more of an objective description than a clearly subsumable legal term.<sup>20</sup> The fact that the concept of digital services of general interest is governed by a wide variety of laws and legal areas, such as the law on digital administrative services (e.g. OZG, EGovG of the Federal Republic of Germany), also contributes to the breadth of the concept of digital services of general interest. OZG, EGovG of the federal government, EGovG of the federal states, BayDiG), digital administrative and administrative procedural law (see, among others, Section 35a VwVfG, Section 24 I 2 VwVfG, Sections 55a, b VwGO) or by horizontal areas of law (see data protection, IT security, municipal and public procurement law).

The legislator and the administration therefore have a great deal of room for manoeuvre as to which services they wish to offer.<sup>21</sup> Too narrow a definition of digital services of general interest would fail to recognise the current technological change and negate the diversity of existing digital activities of local authorities. Digital services of general interest in the information society must therefore encompass more than just IT infrastructures. Consequently, there is no fixed definition or clearly delineated range of services for digital services of general interest. Its areas must always be redefined on the basis of the needs that are necessary for society.<sup>22</sup>

Local authorities in particular must strike a balance between the needs of businesses and residents and their own performance within the limits of local self-government (Art. 28 para. 2 GG). The following areas, among others, can therefore be considered as a range of services of general digital interest<sup>23</sup>:

- digital infrastructure (including broadband internet access, WLAN hotspots),
- digital information (e.g. open data, social media channels),
- digital services (cf. public space server) and
- digital administrative services (see OZG).

## 2.5. Business-friendly administrative services

The analysis has shown that the legal provisions do not clearly differentiate between the requirements of private individuals and companies with regard to digital administrative services. For this reason, the needs of companies and the current implementation status with regard to administrative services will be analysed.

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<sup>20</sup> Similarly, Knauff, Der Gewährleistungsstaat, p. 22; Luch/Schulze, MMR 2009, p. 19.

<sup>21</sup> Luch/Schulze, MMR 2009, p. 21. The Federal Constitutional Court also defines the spectrum of services of general interest rather broadly with the reference point of human dignity, namely as a "service[...] which the citizen inevitably needs to secure a humane existence", cf. BVerfG, decision of 20 March 1984, 1 BvL 28/82, NJW 1984, p. 1873.

<sup>22</sup> On the changes in the tasks of public services: Knauff, Der Gewährleistungsstaat, p. 55 ff.

<sup>23</sup> Wirth/Krabina, Forum Public Management 2/2017, p. 4.

### 2.5.1. Requirements from the company's perspective

The business-friendliness of digital administrative services is primarily given if the entire administrative procedure, from the application to the decision to the legal protection procedure, can be completed fully electronically.<sup>24</sup> It is particularly relevant here that the process is completed without media discontinuity. At best, this is the case if the company's relevant data only needs to be entered once into a central portal in accordance with the once-only principle, this master data can be accessed again and again and, among other things, evidence, identifications, notifications and hearings can all be processed via this portal.<sup>25</sup>

Furthermore, existing procedures must be reconsidered and hurdles removed in the digitalisation of administrative processes. This applies in particular to the area of formal requirements, as these often make it difficult to fully digitalise the entire administrative process without media discontinuity.<sup>26</sup> From a business perspective, technical solutions that are already available should be utilised, which should prevent the need to purchase additional products for a new administrative service.<sup>27</sup> Finally, legal regulations should be easy to find, written in a target group-orientated way and the responsibilities of the authorities clearly regulated.<sup>28</sup>

### 2.5.2. Potential for improvement and implementation status

Looking at the implementation status to date with regard to these requirements, the first positive signs can be seen with the digital check and the Basic Business Data Register Act (UBRegG), but overall the implementation status in the area of digital public services for companies in Germany is below the European benchmarks, so to speak.<sup>29</sup> For example, only a few of the 2872 written form requirements in force at federal, state and local government level (e.g. Section 3a VwVfG, Section 87a AO) have been abolished to date.<sup>30</sup> This contradicts the objective of the coalition agreement, where it was agreed: "*Digital state and digital administration [...] We are dismantling barriers to digitalisation (written form, etc.) by means of generalclauses [...].*"<sup>31</sup>

First of all, legislators should abolish the large number of existing formal requirements because, as shown, they represent an obstacle for both the administration and companies to consistently push ahead with administrative digitalisation. This can be achieved by the legislator considering whether a formal requirement within the meaning of Sections 126-129 of the German Civil Code (BGB) is actually necessary for the purpose (including the function of

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<sup>24</sup> BDA, Digitalisation in public administration and social insurance, op. cit. p. 4.

<sup>25</sup> Likewise: Botta, NVwZ 2022, p. 1248.

<sup>26</sup> Abraham, MMR 2022, p. 530, p. 532.

<sup>27</sup> Similar: Guckelberger, GewArch 2019, p. 460.

<sup>28</sup> BDA, Digitalisierung in öffentlicher Verwaltung und Sozialversicherungen op. cit. p. 1 f.

<sup>29</sup> EU Commission, Digital Economy and Society Index (DESI) 2022, op. cit. p. 18.

<sup>30</sup> BT-Drs. No. 18/9177, p. 4.

<sup>31</sup> Cf: Federal Government, Coalition Agreement 2021-2025 between SPD, Alliance 90/The Greens and FDP, <https://www.bundesregierung.de/breg-de/aktuelles/koalitionsvertrag-2021-1990800>, accessed 27 March 2024, p. 13.

evidence, identification and consultation) each time a form is required.<sup>32</sup> Above all, care should be taken to ensure that new laws do not introduce any new formal requirements or only introduce them if absolutely necessary.

In addition to the legally standardised formal requirements, the current handling of digital authentication procedures must also be reconsidered. These are indispensable in order to guarantee legally secure digital procedures. However, it can be observed that legislators in the German federal state are not focussing on a technical service.<sup>33</sup> For example, Section 55a (4) VwGO, which covers secure electronic transmission channels in administrative proceedings, offers a wide range of electronic transmission methods for communication with the administrative court. In practice, however, such a wide range of options often leads to uncertainties and the provision of several solutions, which results in higher costs and the tying up of resources. For this reason, the federal government and the federal states should initially commit to one technical solution, as companies in particular operate across the board.

Although public procurement law must be observed for procurement by public clients, the restrictions imposed by public procurement law on federal IT cooperation can be resolved from a legal perspective.<sup>34</sup> The Federal Constitutional Court has also already established in a landmark ruling with regard to local self-government (Art. 28 Para. 2 GG) that the federal legislator can stipulate uniform IT standards and digitalisation components.<sup>35</sup> A good example of a standardised and existing IT solution in this context is Elster authentication for the company account.

The lack of prioritisation is also evident in the implementation of the OZG. As it will be a long time before all administrative services are digitised, they must be prioritised. When deciding which services should be digitalised first, the needs of the economy should be taken into account more in future.<sup>36</sup> Their interests could be better taken into account, particularly through the constant involvement of companies in the digitalisation processes, such as through the participation of business associations in the meetings of the IT Planning Council.<sup>37</sup> These nationwide bodies, such as the IT Planning Council and the FITKO, must also be strengthened instead of only thinking within the borders of their own federal state.

In addition, local authorities should be more closely involved in the implementation of the OZG, as they are regularly the first point of contact for local companies.<sup>38</sup> Finally, the analyses of the regulations on digital services of general interest have shown that the regulations do not differentiate between private individuals and companies, which is why more addressee-specific regulations with a company reference remain desirable.

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<sup>32</sup> On the functions of the written form: Abraham, MMR 2022, p. 532.

<sup>33</sup> Neumann/Hogrebe, in: Beck et al. (eds.), *Vollzugstaugliche Normsetzung*, p. 207.

<sup>34</sup> In detail: Schellenberg, NJW 2023, p. 3127 et seq.

<sup>35</sup> BVerfG, judgement of. 20 December 2007, 2 BvR 2433/04 and 2 BvR 2434/04, NVwZ 2008, p. 188 para. 180.

<sup>36</sup> BDA, *Digitalisation in public administration and social insurance*, op. cit. p. 4.

<sup>37</sup> Cf. *ibid.*, p. 3.

<sup>38</sup> Guckelberger, *GewArch* 2019, p. 458; Neumann/Hogrebe, in: Beck et al. (eds.), *Vollzugstaugliche Normsetzung*, p. 207.

To date, neither the OZG nor the OZG Amendment Act contain enforceable subjective public rights to the provision of digital administrative services.<sup>39</sup> The BayDiG is now breaking new ground here and establishing the first digital rights and guarantees (see Art. 8-15 BayDiG), which can accelerate the digitisation of public administration. Furthermore, maturity level 4 has not yet been reached for the OZG services to be digitised, i.e. the stage of development at which the administrative procedure, including the proofs, can be handled completely in accordance with the once-only principle.<sup>40</sup> In order to accelerate the digitisation of administration in this respect, the subsequent use of EfA services must be improved.<sup>41</sup>

On the other hand, progress has been made with regard to the digitalisation of registers, albeit with too long an implementation period.<sup>42</sup> The Register Modernisation Act (RegMoG) and the UBRRegG were introduced in 2021. The UBRRegG in particular should now make it possible from 2024 to standardise the company's master data (see, among other things, Section 3 (2) UBRRegG: name, registered office, business address) for administrative purposes and link it to other registers. In conjunction with the standardised national identification number provided for in Section 2 UBRRegG, this means that companies are relieved of their reporting obligations in the event of a change to the company master data because the linked registers are informed directly of the changes in accordance with Section 5 UBRRegG. Finally, we welcome the fact that legislators at federal and state level are now beginning to introduce a digital check of laws.<sup>43</sup> The idea behind this is that when introducing or evaluating existing laws, legal ordinances and directives, it should be considered whether a digital solution makes sense and how it can be implemented in the most user-friendly way.<sup>44</sup> It is encouraging that the Hessian legislator, for example, has included the necessity of formal requirements, communication without media discontinuity and the possibility of submitting digital evidence as components of the digital check to be analysed in accordance with Section 18 (2) No. 2-4 HEGovG.

Nevertheless, as the digital checks have only been in place for a short time, it remains to be seen how they prove themselves in practice. Ultimately, it is not the mere evaluation of digital suitability that is decisive, but the implementation of the results of the analyses. It remains to be seen whether the proposals of the Standards Control Council, which is responsible for the digital check at federal level in accordance with Section 4 (3) NKRK and which only has a recommendatory role, will be fully implemented by politicians and there are already some doubts about this.<sup>45</sup>

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<sup>39</sup> WD 3 - 3000 - 054/23, P. 4.

<sup>40</sup> BDA, Digitalisation in public administration and social insurance, op. cit. p. 4.

<sup>41</sup> For more details, see: Neumann/Hogrebe, in: Beck et al. (eds.), *Vollzugstaugliche Normsetzung*, pp. 201-203.

<sup>42</sup> On register modernisation: Peuker, *NVwZ* 2021, p. 1167 ff.

<sup>43</sup> Cf. inter alia Section 4 (3) NKRK, Section 18 HEGovG.

<sup>44</sup> Cf. *ibid.*

<sup>45</sup> Similar: LTO editorial team, Digital implementation of federal laws: Draft laws must now undergo a "digital check", [https://www.lto.de/persistent/a\\_id/51419/](https://www.lto.de/persistent/a_id/51419/), accessed 27.03.2024.

### 3. Conclusion and outlook

The explanations have shown that the federal and state legislators are increasingly taking up potential for improvement (see Digitalchecks), which have been recommended in science and practice, and are currently introducing a large number of new regulations. With regard to the questions posed, it should be noted that there is no fixed definition and no fixed range of services for digital services of general interest. Electronic administrative services also play an important role in digital services of general interest, but the needs that companies and society place on digital public services must be constantly updated.

It has also been shown that the digitisation regulations in the OZG and in the eGovernment laws of the federal states do not contain any standards explicitly tailored to companies. Only the register law specifically addresses the interests of businesses. Furthermore, the requirements placed by companies on administrative digitalisation, i.e. that fully electronic processing takes place in accordance with maturity level 4, have hardly been met to date. In order to make digital administration more business-friendly, it is crucial to involve companies and local authorities, implement the analyses from the digital checks, reduce formal requirements, simplify authentication processes, use uniform IT standards across federal states, use administrative services without media discontinuity by increasing the maturity level of the digital administrative services already developed and strengthen central portals and registers.<sup>46</sup>

Finally, it is important to keep an eye on further developments at federal level with regard to the OZG Amendment Act (OZG-ÄndG), which is currently in the legislative process. One positive aspect of the current draft is that local authorities are now to be covered more directly by the scope of application of the OZG (Section 1 (1) no. 2 OZG-ÄndG). This takes greater account of their decisive role in the digitisation of the German administration. It is also to be welcomed that the Federal Government wishes to specify uniform IT standards and infrastructures by means of a statutory order.<sup>47</sup> Regrettably, resistance to this seems to be forming in the federal states, which fear an encroachment on their competences.<sup>48</sup>

Another obstacle to accelerating the digitisation of public administration is that the OZG Amendment Act does not specify a clear implementation deadline or prioritise digitisation services that are relevant to the economy.<sup>49</sup> In contrast, the federal legislator shows a willingness to reform the written form. For example, the written form is to be replaced by a qualified electronic seal (Section 9a OZG-ÄndG) based on the user account. However, this example in particular reveals that the legislator must rethink digital administrative processes in order to remove existing obstacles, as the introduction of a qualified electronic seal does not absolve the legislator from generally rethinking the existing form requirements. The research field of digital services of general interest is a young discipline in which the authors will continue to research and work; professional exchanges are therefore very welcome.

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<sup>46</sup> Likewise: BDA, Digitalisierung in öffentlicher Verwaltung und Sozialversicherungen op. cit. p. 1 f. On the limits of administrative digitalisation: Botta, NVwZ 2022, p. 1247 et seq.; Lorenz, MMR 2022, p. 935 et seq.

<sup>47</sup> BT-Drs. No. 20/8093, p. 20.

<sup>48</sup> BT-Drs. No. 20/8093, p. 83.

<sup>49</sup> DIHK, Gemeinsame Eckpunkte von BDA, BDI, DIHK und ZDH zur Weiterentwicklung des Onlinezugangsgesetzes, <https://www.dihk.de/resource/blob/93990/12cba540dd782336919bac6567e38a67/verbaende-stellungnahme-ozg-data.pdf>, retrieved on 27 March 2024, p. 2.

## Bibliography and sources

Abraham, The written form requirement in administrative digitisation. Traditional legislation and application meets modern society, MMR 2022, p. 530 et seq.

BDA, Digitalisierung in öffentlicher Verwaltung und Sozialversicherungen - notwendige Schritte für einen modernen Wirtschaftsstandort Deutschland, <https://arbeitgeber.de/wp-content/uploads/2022/07/bda-arbeitgeber-Digitalisierung-in-oeffentlicher-Verwaltung-und-Sozialversicherungen-2022-07-01.pdf>, accessed 27.03.2024.

Beck, Joachim et al (eds.), Vollzugstaugliche Rechtsetzung, vol. 11, Baden-Baden 2023.

Botta, "Digital First" and "Digital Only" in public administration, NVwZ 2022, p. 1247 ff.  
Federal Government, Coalition agreement 2021-2025 between SPD, Bündnis 90/Die Grünen and FDP, <https://www.bundesregierung.de/breg-de/aktuelles/koalitionsvertrag-2021-1990800>, accessed 27 March 2024.

DIHK, Gemeinsame Eckpunkte von BDA, BDI, DIHK und ZDH zur Weiterentwicklung des Onlinezugangsgesetzes, <https://www.dihk.de/resource/blob/93990/12cba540dd782336919bac6567e38a67/verbaende-stellungnahme-ozg-data.pdf>, accessed on 27 March 2024.

EU Commission, Digital Economy and Society Index (DESI) 2022, <https://digital-strategy.ec.europa.eu/en/policies/desi-germany>, accessed on 27/03/2024.

Guckelberger, Digital administrative services for the economy, GewArch 2019, p. 457 ff.

Härtel, Digitalisation in the light of constitutional law - algorithms, predictive policing, autonomous driving, LKV 2019, p. 49 ff.

Heckmann/Rachut, Bavarian Digital Act in force for one year on 1 August 2023, jurisPR-ITR 15/2023, Editorial.

Hogrebe, Requirements Engineering for the Implementation of the OZG: Status quo, case study and optimisation potential for the implementation of municipal-relevant OZG solutions, HMD, Volume 58, pages 1054-1066, (2021), <https://link.springer.com/article/10.1365/s40702-021-00768-2>, HMD Praxis der Wirtschaftsinformatik, Fachartikel, retrieved on 27.03.2024.

Klenk/Nullmeier/Wewer (eds.), Handbuch Digitalisierung in Staat und Verwaltung, Wiesbaden 2020.

Knauff, Der Gewährleistungsstaat: Reform der Daseinsvorsorge. A legal analysis with special consideration of public transport, Berlin 2004.

Lorenz, The right to an analogue life, MMR 2022, p. 935 ff.

LTO editorial team, Digital implementation of federal laws: Draft laws must now undergo a "digital check", [https://www.lto.de/persistent/a\\_id/51419/](https://www.lto.de/persistent/a_id/51419/), accessed 27/03/2024.

Luch/Schulz, eDaseinsvorsorge - Neuorientierung des überkommenen (Rechts-)Begriffs "Daseinsvorsorge" im Zuge technischer Entwicklungen? MMR 2009, p. 19 ff.



Lühr (ed.), Digitale Daseinsvorsorge - Bremer Stadtgespräche zur digitalen Staatskunst, 2020.

Peuker, Register modernisation and data protection, NVwZ 2021, p. 1167 ff.

Schellenberg, Public procurement law as an obstacle to federal IT cooperation, NJW 2023, p. 3127 ff.

Wirth/Krabina, Act now. Positioning, raising awareness, exploiting the opportunities and potential of digitalisation, Forum Public Management 2/2017, p. 4 ff.

Research Services of the German Bundestag, Legal Entitlement to Digital Administrative Services, No. WD 3 - 3000 - 054/23.

<https://www.bundestag.de/source/blob/951398/f3f59c0633d387b40c00229c7e7eb65b/WD-3-054-23-pdf-data.pdf>, accessed on 27 March 2024.