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Germany has an exciting and dynamic legal tech scene. And a stone-age regulatory framework for legal advice. This legal framework hinders innovation and investment inside and outside law firms. While "inside" there is hardly any entrepreneurial freedom of movement, "outside" there is a lack of legal certainty when it comes to the question of what legal tech is actually allowed to do. Individual bar associations and lobbying players have recently barricaded themselves in the lawyers' quasi-monopoly. A fatal blockade. While flexible regulatory systems in the UK and the US are fuelling the economic development of legal tech inside and outside law firms, Germany is sleeping through the development. Stanford University's CodeX LegalTech online survey shows the U.S. as the clear global market leader and the U.K. as the European number one. The German government is leaving its options unused and leaving the key decisions to the Federal Court of Justice. However, it is not up to the courts to shape the legal framework for new business models based on individual issues, but up to policymakers to create a sensible legal framework in this important economic field. This initiative aims to bridge the gap between lawyers and non-lawyers: More professional legal leeway for some and more legal certainty for others. This would be the farewell to the struggle for an outdated regime. As a first step, all that is needed is some intervention in the Federal Lawyers' Act (BRAO) and the Legal Services Act (RDG).

First demand: introduction of contingency fees for lawyers

At its core, our professional law recognizes only legal advice by lawyers, with a few, very narrow exceptions. Subsumption" is reserved for lawyers, not only in court. But they are not allowed to take risks with their clients (contingency fee), share their fee success (commission), operate subsidiary companies (double-dealing) or take investors on board (debt financing). This makes it difficult to invest in digitizing, automating and scaling legal services.

That's why the first thing to do is legalize the contingency fee. It is no longer tenable in times when outside law firms, for example in the diesel scandal or the truck cartel, companies like myright - -in direct competition with law firms - are using contingency fees to acquire disproportionately higher numbers of cases and in turn enforce them.

The professional image underlying the 1994 ban was already wrong at the time. It was based on the assumption that lawyers would throw their professional duties overboard for more money. However, it is often only in the case of very low or very high amounts in dispute that contingency fees open up the possibility of agreeing high-quality legal advice. With the settlement fee, moreover, there is already a success element in attorney compensation that works well - and can be expanded. And when working with (technology) service providers, attorneys even run the risk of violating the prohibition on referral fees if the services used include referral services in addition to marketing and infrastructure.

Second demand: Permission for out-of-court, non-lawyer legal advice

On the other hand, non-lawyer legal tech companies have a right to legal certainty. After all, they have created access to the law in many areas in the first place. Within just a few years, the air passenger rights portal Flightright was able to win five leading decisions from the German Federal Court of Justice and another five before the European Court of Justice - all in favor of air passengers who received compensation against airlines for delays and flight cancellations. In landlord and tenant law, according to Stiftung Warentest, Wenigermiete.de accounts for numerous successful cases in the enforcement of the Mietpreisbremse (rent brake). And the lawyers at the LegalTech law firm Rightmart were able to enforce out-of-court adjustments in 45 percent of Hartz IV notices.

These legal techs, which often enforce consumer payment claims for commission, develop enormous negotiating power because they bundle claims economically. They also build up legal expertise for dealing with large opponents via scaled case numbers. They relieve consumers of the cost risk and provide them with a fighter at their side - in return for a share in the success.

To bring their product to market, many legal tech providers operate with a debt collection registration under the RDG. It allows legal advice in connection with the enforcement of claims - and yet is only a legal crutch.

The BGH, using the example of the wenigermiete.de offer, confirmed a broad interpretation of the debt collection permit and declared the combination of debt collection and litigation financing to be permissible in principle.

In the end, however, the BGH also leaves it up to the courts to evaluate the business models in individual cases. Much is still unclear: Where exactly is the boundary between permissible ancillary services for debt collection and impermissible legal advice? What needs to be considered when combining debt collection and litigation financing?

In which cases do violations of the RDG also have consequences under civil law and procedural law, which could, for example, result in client claims becoming time-barred.

Outside the field of debt collection, innovative offerings such as contract generators pose fundamental questions and challenge the regulatory framework. Does a software provider provide a legal service if the person seeking legal advice defines the product through his own input? Does the degree of complexity of the software determine whether it is classified as a (prohibited) legal service?

Here, the legislator is called upon to create a set of facts for non-lawyer legal advice that meets the needs for access to law. It can be raised on the regulatory instrument of debt collection registration, but the field of activity must explicitly include the examination and participation in the creation of the claim. It can formulate qualification requirements for the responsible persons, include the examination of technical settlement processes and must anticipate liability risks.

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