



## **Country Report of the German Bar Association (DAV) 51<sup>st</sup> European Presidents Conference 16th – 18th February 2023 in Vienna**

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As in last year's report, there are once again numerous legislative and policy developments in deontology, various areas of law and with regard to the policy engagement of the German Bar Association, which would have deserved to be mentioned found a place in our country report. In this shorter four-pages-version, the report focuses anew on a few core topics.

### **1. Collective escrow accounts: New regulation in the form of § 4 BORA**

Many German lawyers received a letter from their bank terminating the contract for their collective escrow accounts at the beginning of 2022. These letters of notice were triggered by new interpretation and application instructions from the Federal Financial Services Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) in which a previously existing privilege for lawyers and notaries had been deleted. Until 2021, both professional groups had been subject to simplified due diligence obligations when identifying beneficial owners, since their money laundering risk was considered as low. With the termination of escrow accounts, the BaFin in turn reacted to the [National Risk Analysis \(NRA\)](#) by the Federal Ministry of Finance that concluded that there is in fact a high money laundering risk in escrow accounts. After numerous discussions and also following an intervention by DAV president Edith Kindermann, the Federal Bar's Statutory Assembly decided at its session on 29/30 April 2022 to repeal the obligation that collective escrow accounts for third-party funds had to be kept "in stock". Individual escrow accounts were introduced as the new standard with an amendment to § 4 para. 1 BORA (German Rules of professional practice). In December 2022, further changes were adopted by the Statutory Assembly: In the future, no payments may be processed through collective escrow accounts where risks relating to money laundering or terrorist financing are assumed. Therefore, payments in transactions related to money laundering such as real estate and corporate transactions, cash deposits with a value over 1.000 euros and incoming payments from certain high-risk countries as well as money transfers to these countries will not be processed through these accounts.

### **2. Planned Federal Authority for combating money laundering including a newly founded Federal Financial Crime Authority**

At the end of August 2022, the Federal Ministry of Finance published a key issues paper with regard to the "more effective fight against financial crime and more effective enforcement of sanctions in Germany". The paper provides for the creation of a new "Federal High Authority for combating financial crime" (Bundesoberbehörde zur Bekämpfung der Finanzkriminalität, BBF).



The BBF will be based on three pillars:

1. The new Federal Financial Crime Office (**Bundesfinanzkriminalamt**) will be responsible to specifically investigate complex financial crime cases and shall provide the necessary expertise to do so.
2. An effective **Finance Intelligence Unit (Zentralstelle für Finanztransaktionsuntersuchungen)** will be part of this new institution.
3. A new Central Office for Anti-Money Laundering Supervision (**Zentralstelle für Geldwäscheaufsicht**) will coordinate the supervision of the non-financial sector, develop guidelines and standards and serve as a central contact point for the future European Anti-Money Laundering Authority (AMLA).

Furthermore, the Federal Ministry of Finance plans to invest in the training of financial investigators and to build up further expertise. In addition, the digitalisation and interconnection of registers shall be expedited in order to efficiently verify ownership and beneficial owners. On September 6, 2022, the German Bar Association hosted a public forum on Anti-Money Laundering, focusing on the EU Anti-Money Laundering package, the National Risk Assessment of the Federal Ministry of Finance, and the risk of money laundering related offences when handling mandates. A summary of the event with links to written statements by the panelists can be found [here](#).

### **3. Digitalisation in civil and criminal law proceedings**

#### **a) Civil law**

The draft bill on the promotion of the use of videoconference technology in civil and specialised courts was published in November 2022. The draft law provides that, presiding judges shall be authorised in the future to order video hearings. So far video hearings are only possible if suggested by the parties to a dispute which will also remain possible under the new draft law. The draft law envisages a complete virtual trial where judges do not necessarily have to be present in the courtroom. The videoconference technology shall also be used for the preparation of the minutes, substituting the still used dictation devices. A draft law with regard to a common video conference standard in all German courts is supposed to be published until June 2023. The federal government plans to provide the Laender with the necessary software, which is currently being developed. The DAV has long called for a standardisation of video conference software in courts<sup>1</sup>.

#### **b) Criminal law**

In criminal law, the Federal Ministry of Justice published a draft law on the digital documentation of main criminal court proceedings at the end of November 2022. This draft law envisages a legal basis for a digital documentation of all first-instance main hearings before the regional courts and high regional courts. According to the legislative proposal, the audio recording shall be automatically transcribed into a text document and this text document shall be made available to the parties in the proceedings in addition to the formal minutes of the hearing. In case of technical problems, the continuation of the main hearing shall have priority. The draft law does not affect the right of revision.

According to the draft law, the obligation to record and transcribe are to be introduced in the year following the formal adoption of the law in the form of a pilot

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<sup>1</sup> DAV position paper no [30/2021](#) (in German language only).



phase which will last until 1 January 2030 authorising the Laender to deviating from this obligation until the end of pilot phase. However, the obligation to record and transcribe will be mandatory for the so-called State Protection Senates (Staatsschutzsenate) from 1 January 2026. This will only be possible if the pilot phase within the State Protection Senates will take place as early as in 2025.

#### **4. DAV activities with regard to the European Commission's planned SAFE Directive**

The DAV strongly rejects the planned initiative by the EU Commission to regulate intermediaries (or "enablers" as The Commission calls them) of tax evasion and aggressive tax planning. Criminally sanctioned tax evasion must be strictly separated from legal advice to clients within the limits of the law. The Commission should rather call on the Member States to enact more precise tax laws and to reduce loopholes. The DAV has already had a meeting with the competent unit in DG TAXUD and will further pursue the topic in discussions with DG TAXUD. The DAV believes that the Commission, due to the lack of a legal basis and bearing in mind the risk of serious infringements of fundamental rights, ought to refrain from publishing the planned legislative proposal. The Commission should rather envisage a legislative proposal with regard to the prevention of tax evasion focusing on taxpayers. Such a legislative proposal would be subject to the unanimity requirement in the Council.

#### **5. Advocating Rule of Law and Human Rights**

##### **a) Activities of the DAV with regard to Afghanistan**

Since the Taliban's takeover of power in Afghanistan, one focus of the DAV's Human Rights commitment has been to help Afghan lawyers. The DAV maintains close contact with exiled lawyers of the Afghan Independent Bar Association (AIBA) and supports Afghan colleagues that still live in Afghanistan and who are in danger as part of our participation in the newly launched humanitarian admission programme of the Federal German Government. On 24 January 2022, the Day of the Endangered Lawyer, the DAV together with the Berlin Bar and the Republican Lawyers' Association hosted an event on the current situation of Afghan colleagues and the judiciary in Afghanistan Taliban's takeover of power, which included an Afghan colleague as speaker. The DAV is in close contact with the International Legal Assistance Consortium (ILAC) which recently published [Status Report on Afghanistan Since the Taliban Takeover](#).

##### **b) Contribution to the Rule of Law Report 2023**

The DAV took part in the European Commission's targeted stakeholder consultation for its Rule of Law Report 2023 and published the Position Paper No. [04/2023](#). The DAV criticises, among other things, the appointment procedure of judges for the highest German courts. Likewise, the digitisation of the judicial systems in Germany continues to make only slow progress and, from the perspective of the Laender, there is a lack of sufficient financial resources on the part of the Federal Government. The DAV also reiterates its criticism with regard to the length of proceedings, especially in relation to proceedings before the Federal Constitutional Court.



**c) Update on Ukraine**

The recent activities in order to support colleagues from Ukraine seeking help – particularly the Help platform [DAV-Patenschaftsplattform](#) as well as the Ukraine-Portal [in German](#) – and [in English](#) – are still ongoing. In addition, the DAV supported an expansion of activities of European Lawyers in Lesvos (ELiL) to Poland. With the help of the Pro Bono Collaborative Project, refugees from Ukraine and Belarus can receive independent and free legal advice at UN centres.

**d) Iran Commitment**

The DAV stands in solidarity with the democratic protests in Iran and repeatedly called for an immediate end to any repression against the protesters and their lawyers in Iran together with other legal organisations, which included a joint declaration that was handed over to the UN Special Rapporteur on the independence of judges and lawyers as well as the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran. The DAV also joined other organisations in initiating a public manifestation in front of the Brandenburg Gate in Berlin in November 2022. In a press statement, Dr. Sylvia Ruge, the DAV's General-Director, strongly condemned the attacks on Iranian lawyers solely based on the exercise of their profession. In January 2023, DAV President Kindermann wrote another letter to the Iranian Ambassador in Germany and called on the Islamic Republic of Iran to immediately suspend the announced enforcement of death sentences and to respect the International Covenant on Civil and Political Rights and in particular the protection of fundamental rights of Iran's people and the strict interdiction of the prohibition of torture.

**e) Rule of Law podcast – Season 2: Defending The Defenders**

The DAV, together with Verfassungsblog, devotes special attention to the defense of lawyers under the title “Defending the Defenders” in a new season of its co-hosted Rule of Law podcast [„We Need to Talk About the Rule of Law“](#). Lawyers are under pressure in numerous countries as also noted by the UN Special Rapporteur on the independence of judges and lawyers in his [report](#) in June 2022. Where and when the Rule of Law is at stake, colleagues have to face a state takeover of bar associations, arbitrary disbarments, imprisonment or even physical violence. Conversations with colleagues from Poland, Belarus, Afghanistan, Turkey and Colombia are part of this podcast season. Another episode deals with the regulation of the legal profession at the European level, especially with regard to feared restrictions of the independence of the profession.