



Country Report of the German Bar Association (DAV)

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The German Bar Association (DAV) and its local bar associations draw their strength from the voluntary cooperation of lawyers. It is the statutory duty of the DAV to represent their interests in economic, public and professional terms. At the same time, the DAV is a sought-after contact for almost every legislative project in the Federal Republic of Germany. In many cases, the DAV provides important socio-political and legal impulses through its work. This applies in particular to access to justice in its broad sense.

There is a whole range of topics from the fields of legal policy and professional regulation and the various initiatives in the DAV's legal and socio-political commitment that could find their place in this country report. In addition to the issues already addressed in the Rule of Law Report of the DAV, this report deals with the reform of lawyer's professional regulation in Germany and the demand for increased lawyer's fees.

Major reform of the The Federal Lawyers' Act (Bundesrechtsanwaltsordnung-BRAO): DAV discussion proposal for the new regulation of legal corporate structures

The regulation of lawyers and in particular the corporate law for lawyers is incomplete and fragmented and only rudimentarily reflects the possibilities of cooperation among lawyers. A fundamental reform is needed. Only recently, two decisions by the Federal Constitutional Court (on the unconstitutionality of the majority requirements in law firms and on the restriction of professional cooperation of lawyers with other professions) made clear that there is a need for legislative action in this area.

The basis for the current regulation of legal corporate structures in the BRAO is the civil-law partnership, so called Gesellschaft des Bürgerlichen Rechts in Article 59a BRAO, supplemented by the Rechtsanwaltsgesellschaft mbH in § 59c BRAO. Other legal forms are only recognised in case law, such as the Rechtsanwaltsaktiengesellschaft, the Kommanditgesellschaft or foreign legal forms

such as the LLP. The BRAO as it stands at present is oriented towards the individual lawyer as the subject of professional rights and obligations. Although cooperation and association of lawyers is explicitly foreseen in the professional regulation, all professional rights and duties are oriented towards the individual professional. This no longer corresponds to the real world on the legal market. The organisation of a law firm and personal basic duties can often no longer be fulfilled and checked by the individual lawyer, especially not by employed lawyers.

In addition, the DAV has long been calling for the possibility of interprofessional cooperation with regard to all professions that improve the situation for clients without posing a threat to the core values of the legal profession. So far, lawyers admitted to practice in Germany are only allowed to cooperate with professionals laid down in Article 59a BRAO for the joint exercise of their profession. It is argued that confidentiality is only guaranteed in the case of the self-regulated professions mentioned in Article 59a BRAO.

Since 2006, the DAV has been campaigning for opening up the cooperation with other compatible professions. Regarding such compatible professions, which are also subject to professional secrecy obligations, there is no risk of impairment of the protection of professional secrecy. The protection of confidentiality does not have to be regulated in the same way as for lawyers. According to the Federal Constitutional Court, it is sufficient that the level of protection can be guaranteed in a comparable manner. Due to decisions of the Federal Constitutional Court (12.01.2016, Ref. 1 BvL 6/13) and the Federal Supreme Court (12.04.2016, Ref. II ZB 7/119), professional cooperation with doctors and pharmacists is also permissible in the meantime and this does reveal the necessity for legislative action.

In addition to these legal arguments, surveys show that there is a growing need within the legal profession to expand the compatible professions (according to a recent study by the Soldan Institute, 53 percent of the lawyers surveyed aged up to 40 were in favour of expanding the number of professions to cooperate with). The obvious success of multidisciplinary partnerships of lawyers, tax consultants and auditors in recent years shows that the bundling of different disciplines is particularly attractive for clients and meets their consulting needs.

The DAV is therefore committed to a comprehensive reform of the corporate law of lawyers and, as a result, to expand the opportunities for cooperation with other professions. The DAV demands from the legislator a comprehensive and coherent new regulation of the company law of lawyers in order to modernise the regulation of lawyers and to adapt it to today's legal reality.

In February 2018, the DAV therefore commissioned Prof. Dr. Martin Henssler of the University of Cologne (Institute for regulation of lawyers) to prepare an expert opinion for such a reform with justification for a complete restructuring. Henssler presented

the first draft in June 2016 at the DAV Board Meeting on the occasion of the German Lawyers' Conference 2018. The proposal contains the regulation of law firms, regardless of their legal form, from the admittance to the Bar, supervision, questions of liability limitation, compulsory insurance, up to questions of cooperation with other professions. (Please see AnwBl 2018, 564).

At a DAV Conference on 20 September 2018, Henssler presented the DAV-discussion proposal to a broader public and discussed the possible reform with representatives from the legal profession, academics and the Federal Ministry of Justice. The DAV-proposal has been discussed in the DAV-Deontology Committee and subsequently in the DAV-Presidency. It is planned to adopt a position on the reform of the BRAO in February 2019 after it has been discussed within the DAV board.

Demand for an appropriate increase of the regulated lawyer's fee

Since 2016, DAV and BRAK have been calling on the legislator for an appropriate increase of the regulated lawyer's fee. DAV and BRAK have submitted a comprehensive list of demands for this, which has been drawn up jointly. An appropriate remuneration of the lawyers, based on the Lawyers' Remuneration Act, is necessary in order to continue to guarantee access to justice. The increase is to be based on the general development of collectively agreed wages. For months, DAV and BRAK have been holding numerous discussions with representatives of the Federal Ministry of Justice, members of the Bundestag and representatives of the federal states.