



## **Country Report of the German Bar Association (Deutscher Anwaltverein, DAV) 50<sup>th</sup> European Presidents' Conference 9<sup>th</sup>-11<sup>th</sup> of June 2022 in Vienna**

---

Once again, various developments in deontology and legal policy throughout the past year would have been worthwhile mentioning in this year's country report. However, this report focuses in its new, shorter format on key topics like the entering into force of the reform of the German Federal Lawyers' Act (Bundesrechtsanwaltsordnung, BRAO), the new DAV intervention platform and the ongoing commitment of the DAV to strengthening the Rule of Law and with regard to human rights.

### **1. Termination of collective escrow accounts of lawyers**

In the beginning of 2022 numerous lawyers received letters of termination by their banks regarding their collective escrow accounts. This was prompted by new interpretation and application guidelines by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) which no longer included a derogation for lawyers and notaries. Until 2021 simplified due diligence rules were applicable to both professions regarding the verification of beneficial owners as the risk for money laundering was categorized as low. The removal of the exemption rule was the result of the [First National Risk Assessment](#) by the German Federal Ministry of Finance, which concluded that there is a higher risk of money laundering for escrow accounts. Banks were not obliged to terminate collective escrow accounts, but they decided to do so based on internal risk assessments following the BaFin's report.

The DAV commented upon the changes contained in the report of BaFin in a [press release](#) and called upon the authorities to introduce a new derogation for collective escrow accounts of lawyers. In a [letter](#) DAV President Edith Kindermann addressed the Federal Minister of Justice and the Federal Minister of Finance as well as numerous bank associations, to bring about a solution of the matter, which upholds the interests of the legal profession. In April 2022 the Federal Ministry of Finance and the BaFin sent clarifying letters to the banks, that there were ongoing negotiations with the legal profession and urged the banks to assess the risk of escrow accounts with a sense of proportion. The Federal Ministry of Finance hopes that the notices of terminations of collective escrow accounts of lawyers are withdrawn or that new escrow accounts are to be established.

### **2. New Federal Government: new priorities in Justice Policy**

On 8 December 2021 the new Government Coalition took up its work. New priorities of the Federal Ministry of Justice include for example an analysis of the previous legislation as well as of the status quo of financial support of the entire judicial system.

Numerous demands of the DAV were included in the [coalition agreement](#):



The federal Laender shall be supported in the digitalization of the courts with a Digital Pact for the Justice System. The so-called Pact for the Rule of Law shall be made permanent; it will support the federal Laender financially to hire additional staff. The security laws of the federal Laender are supposed to be evaluated regarding their actual and legal effects and their effectiveness. For this purpose an overview of all surveillance laws is supposed to be drawn up and the current security laws shall be reviewed with regard to their effects on freedom and democracy. The federal Government opposes an unsolicited data retention. In the field of criminal law, the audiovisual documentation of criminal trials, as well as of interrogations is supposed to be introduced. Criminal law shall be *ultima ratio*. The legal profession is supposed to be strengthened through a modification of the prohibition of success fees and the prohibition of third-party ownership of law-firms. Furthermore the Federal Government, unlike the previous government, supports the drafting of a Convention in the Council of Europe to protect the legal profession.

### **3. DAV intervision platform as a new service**

The DAV created a virtual platform for intervision. The service is free of charge for members of the local bar associations and is available as of now in the secured member section of the DAV website [www.anwaltverein.de](http://www.anwaltverein.de).

Intervision is the collegial counseling in moderated groups. Its main purpose is to allow a confidential exchange and reflection on difficult cases and challenging situations in the professional practice. The range of topics is diverse: difficult situations in mandates, with judges, opponents or colleagues, but also in an honorary office, regarding management tasks or difficult situations in decision making, e.g. for ethical or strategic questions. There are a few rules to be followed: first and foremost confidentiality (reports must be contributed anonymously) and abandonment when there is a conflict of interest. In the member section on the DAV website members can find checklists, a training video and a lot more.

All members are invited to create or to join a group for intervision. A group can be created by just a few clicks in the member section. The group is named with a keyword, e.g. a field of law or a topic like legal ethics or conflict management. Colleagues who are interested can join any given group. In the member section an overview of the existing groups which are looking for further members is available.

More about intervision: DAV director general Dr. Sylvia Ruge in [AnwBl 2022, 116](#) (in German).

### **4. Newsflash**

#### **a. Reform of the German Federal Lawyer's Act entering into force in summer**

The reform of the German Federal Lawyer's Act will enter into force on the 1<sup>st</sup> of August 2022. The reform includes changes to the rules on corporate forms available to law firms; they will be allowed to choose their corporate form based on German and European Corporate law. This constitutes an alignment of the rules applicable to lawyers, tax consultants and auditors. The reform also strengthens the possibility of inter-professional cooperation as lawyers will be allowed to form societies with members of other liberal professions. The prohibition of third-party-ownership of a law firm stays in place, so that it is still not possible to take a holding in a law firm in the form of a capital contribution.



The DAV welcomes the reform because key demands stated by the DAV (Position Paper [87/2020](#); in German) were met. The DAV issued a [short commentary](#) (in German) on the amended rules and legislative reasons and commented on the most relevant amendments. A more detailed article can be found [here](#) (in German).

**b. Obligation to use the special electronic lawyer's mailbox since the 1<sup>st</sup> of January 2022**

Since 1 January 2022 lawyers are obliged to actively use the special electronic lawyer's mailbox (besonderes elektronisches Anwaltspostfach (beA)). Preparatory pleadings and annexes, as well as written requests and statements have to be transmitted in an electronic document. Other ways of transmitting, like using the postal route, are only permitted, if the beA cannot be used temporarily due to technical difficulties. This needs to be substantiated immediately. More information can be found [here](#) (in German).

**c. Introduction of a Lobbying Register since 1<sup>st</sup> of January 2022**

On 1 January 2022 the Lobbying Register Act entered into force. Stakeholders now have to register in the Lobbying Register if they represent interests on a regular basis, on a permanent basis or if they represent interests commercially for third parties towards members, parliamentary groups or groupings of the German Bundestag or towards the Federal Government. The Lobbying Register is an electronic public register, maintained by the German Bundestag. Information on the exceptions for legal advice or on upholding the duty of confidentiality can be found in the [Manual](#) on the Lobbying Register published by the German Bundestag (in German). More information can be found [here](#) (in German).

**5. Engagement for the rule of law and human rights**

**a. Engagement for Ukrainian lawyers**

Colleagues from Ukraine who seek help in Germany can register on the [DAV partnership platform](#) with a questionnaire in English, Ukrainian or Russian. They are then matched with German colleagues who offered help, mostly in form of a temporary accommodation. Until now this program allowed to provide more than 50 Ukrainian lawyers and/or their families with temporary accommodation, in some cases it was also possible to provide a temporary workplace or an offer of collegial cooperation.

On the DAV website information for Ukrainian refugees is available both in English and German. This contains [FAQ's](#) for the access to social services for Ukrainian Refugees provided by the DAV Section for Social Law, useful tips and links regarding temporary stay in Germany by the [DAV Section for Migration Law](#) and an [overview](#) on the possibility of professional establishment in Germany.

Ukrainian colleagues can seek legal advice by highly specialized colleagues through the [DAV – find a lawyer section](#). Some local Bar Associations – like the [Cologne](#) and [Berlin](#) Bar Association – offer access to free legal advice for Ukrainian refugees. Pro Bono work is supported through different free training events.

Together with the German Federal Bar the DAV issued a joint statement in which the Russian invasion of Ukraine is condemned as a grave breach of international law. In a [joint Letter of Support](#) with the Parisian Bar and the Warsaw Bar Association in the format of the



Weimar Triangle of Lawyers, the DAV proclaimed its solidarity with the legal profession. The DAV Vice President and Chair of its Human Rights Committee Stefan von Raumer also wrote an [article](#) in the Anwaltsblatt regarding the rule of law in Europe under the impression of the war.

The former Federal Minister of Justice and Member of the DAV Human Rights Committee Ms. Leutheusser-Schnarrenberger filed a criminal complaint to the Federal Public Prosecutor General against the Russian Government because of war crimes and crimes against humanity in Ukraine. The Federal Public Prosecutor General's office has subsequently started the so-called Structure Determination Procedure (Strukturermittlungsverfahren).

#### **b. Contribution to the Report on the Rule of Law 2022**

With its position paper [02/22](#) the DAV took part in the consultation procedure of the EU-Commission concerning the Report on the Rule of Law in January 2022. The DAV criticized sharply the legislative proposals of the European Commission with regard to Anti-Money Laundering. On the national level the Act on Establishing Material Justice (Gesetz zur Herstellung materieller Gerechtigkeit) raises considerable concerns of constitutional matter. On the basis of this Act closed criminal cases having the force of law can be reopened to the detriment of an acquitted defendant. Furthermore the DAV expresses its persisting concern about the duration of court cases as well as the insufficient resources of courts in both staff and (technical) equipment. The DAV also renewed its criticism of the shift of the issuing legislation from the Legislative Power to the Executive Power in the context of the Covid-19 pandemic and called for the strengthening of the Legislative Power.

#### **c. Afghanistan**

Since the takeover of power by the Taliban in Afghanistan, the human rights engagement of the DAV focused on help for the legal profession in Afghanistan. The DAV supports Afghan lawyers, including Board members and other Officials of the Afghanistan Independent Bars Association (AIBA). The support includes taking requests on humanitarian visa and forwarding these to the responsible department at the German Federal Foreign Office. DAV president Kindermann addressed two letters to the Federal Government in which she demanded fast protection of threatened lawyers in Afghanistan. In the following two press releases the call for a fast evacuation of threatened Afghan colleagues and members of the legal professions was reaffirmed. In addition the DAV signed [a joint statement](#) of the G7 of Bars on the protection of Women in the legal profession and defenders of human rights in Afghanistan, as well as the [CCBE petition](#) on the support of endangered lawyers in Afghanistan. As part of our public engagement, an [article](#) was published in the Anwaltsblatt about the dire situation of local employees of the Federal German Government in Afghanistan, the DAV reported on the [Exceptional CCBE Human Rights Award for endangered lawyers in Afghanistan](#) and published relevant information on the [DAV Human Rights Portal](#).