



Country report of the German Bar Association (DAV) 53rd European Presidents' Conference 27 February - 1 March 2025 in Vienna

As in last year's report, there are once again numerous topics relating to the law of the legal profession as well as the DAV's policy engagement that could be included in the country report. In this brief four-pages-version, the report is limited to a few core topics.

1. AI-Act implementation

The AI Act came into force on 1 August 2024 and stipulates that the EU member states must define a supervisory structure for national implementation by 2 August 2025.

At the request of the Federal Ministry for Economic Affairs and Climate Protection (BMWK), the DAV provided application examples for the development of guidelines on definitions and prohibitions in the AI Act by the EU Commission in September 2024 and participated in the subsequent consultation of the EU Commission in December 2024. Application cases of the prohibited practices are relevant in order to make it easier for the target group of the AI Regulation to make the sometimes difficult distinction between prohibitions, high-risk use cases and unregulated use cases. This challenge is highly relevant for the target group of the AI Regulation, in particular due to the staggered application of the AI Regulation. The provisions on prohibited practices under Art. 5 of the AI Regulation have been in force since 2 February 2025. With regard to the European Commission's consultation on guidelines, the DAV has expressed a need for clarification, particularly in conjunction with the General Data Protection Regulation.

In mid-September 2024, it was announced that the federal government had decided on the main features of the national authority structure. The central role has been envisaged for the Federal Network Agency (Bundesnetzagentur). Some other authorities are to take over market supervision in certain areas, such as the Federal Financial Supervisory Authority (BaFin) for the financial sector. As the central supervisory authority, the Federal Network Agency is to set up a coordination centre for coordination between the individual supervisory authorities and effective implementation. The Agency should not only be given supervisory tasks, but also a strong mandate to promote innovation.

The cabinet referral for an implementing law with regard to the AI Regulation was planned for the first quarter of 2025. Due to the early elections to the German Bundestag on 23 February 2025, it is currently unclear whether the new government will adhere to this definition of responsibility. Alternatively, but rather unlikely, there might take place a transfer of responsibility to the federal data protection authorities.

Most of the obligations, particularly in relation to high-risk systems, will come into force only after a transitional period of 24 months, i.e. from August 2026. The discussion about the impact of the AI Act on the German justice system is just starting out. Simply checking whether a software application that is supposed to be used in the justice system is an AI programme and whether it is to be categorised as high-risk in the absence of relevant exemptions will tie up capacities of already scarce human resources. It is unclear to what extent the judiciary is already processing internal preliminary assessments and documentation with a view to the future application of the AI Regulation.



2. Protection of lawyers' fundamental values at European level

At the European level, there are continuous efforts to curtail fundamental values and to label lawyers as "enablers" of money laundering, sanctions evasion and tax evasion. These European legislative acts affect the legal profession by interfering **with professional confidentiality** or the **independence of lawyers**. In cooperation with the CCBE, success was achieved with regard to the EU money-laundering package and, in particular, restrictions on professional confidentiality as a result of purely suspicion-based reporting requirements.

The DAV welcomes the fact that the **Council of Europe Convention on the Protection of the Profession of Lawyer** has overcome the first obstacle in the Council of Europe and is now close to final adoption by the Committee of Ministers. In co-operation with the BRAK and the CCBE, successes have been achieved here, particularly with regard to the level of protection of confidentiality of communication with clients and protection against seizure, see also No. 6a) below.

3. Prohibition of third-party participation

The DAV welcomes the decision of the European Court of Justice (ECJ) on the conformity of the German ban on third-party participation with EU law, as it emphasises the importance of legal independence as a core value of the legal profession.

The background to the decision was a ruling by the Lawyers' Court of Bavaria (AGH) as of 20 April 2023, which had initiated preliminary ruling proceedings pursuant to Art. 267 (1) TFEU due to doubts about the conformity with EU law of the provisions on the prohibition of third-party participation in the version of the Federal Lawyers' Act (BRAO old version) applicable until 1 August 2022.

The relevant provisions of the old version of the BRAO prohibit pure capital participation in professional practice companies (so-called prohibition of third-party ownership or third-party participation). The AGH referred questions to the ECJ regarding the interpretation of the free movement of capital (Art. 63 (1) TFEU), the freedom of establishment (Art. 49 TFEU) and Art. 15 of the Services Directive 2006/123/EU to .

In his Opinion, the Advocate General responsible had classified the restrictions set out in the old version of the BRAO as incoherent and therefore contrary to EU law. Nevertheless, on 19 December 2024, the ECJ ruled against this assessment and confirmed that the prohibition on the participation of pure financial investors is not contrary to EU law: EU law does not force the national legislator to allow pure financial investors who do not belong to a profession capable of practising as a lawyer access to a professional practice company. The DAV is particularly pleased that the ECJ emphasised the importance of the legal profession in a democratic society and stressed the necessity of lawyers' independence from both state influence and economic interests.

4. Confidentiality protection for lawyers after Jones Day

On 21 November 2020, the European Court of Human Rights published its decision on the 2017 search of the Munich offices of the law firm Jones Day and the seizure of documents (proceedings [1022/19](#) and [1125/19](#)), disappointing from a lawyer's perspective. The ECtHR found no violation of Article 8 of the [ECHR](#) and dismissed the



complaints as manifestly unfounded and therefore inadmissible. According to the ECtHR, the interference with Article 8 ECHR was justified as Audi was not a client of Jones Day, which is why Audi-related documents were not covered by the protection of legal professional confidence. In addition, the law firm's mandate was limited to an internal investigation and representation in the USA, meaning that there was no direct defence relationship in the German criminal proceedings.

The result for the legal profession is the impression of an unclear and in parts contradictory concept of protection for the confidentiality of lawyers' communications under criminal procedure law. The legislator is called upon to go beyond the minimum standards under constitutional and (current) convention law. The Council of Europe's Convention on the Protection of the Legal Profession, which establishes absolute protection of legal professional confidentiality as a new minimum standard, provides grounds for legislative action. It would contradict the objective of the Convention if not all lawyers, namely those who are not (yet) defence lawyers, received no or only a low level of protection.

5. Attorney fees

In cooperation with the BRAK, the DAV has persistently campaigned for an increase in statutory lawyers' fees. On 31 January 2025, shortly before the new elections, the Bundestag decided to adjust lawyers' fees through linear increases in fees and structural changes as part of the 2025 Law amending the law on the remuneration of caregivers (Betreuervergütungsrechtsänderungsgesetz 2025). However, the law still requires the approval of the federal states in the Bundesrat, which will have to bear the resulting additional costs for the state treasury. The last adjustment was made on 1 January 2021, since when costs and collectively agreed wages have risen significantly. A regular adjustment of the statutory remuneration is of fundamental importance for universal access to justice for all those seeking legal advice. The German Lawyers' Fees Act is an essential basis for the procedural principle of full reimbursement of costs in the case of winning, the reimbursement of costs by legal expenses insurers and for legal aid. A far-reaching switch to remuneration agreements in the event of insufficient statutory remuneration would make access to justice significantly more difficult. The DAV therefore advocates for a regular adjustment at least once every legislative period (4 years).

6. Commitment to the rule of law and human rights

a) Rule of law

- (1) The DAV has submitted a statement as part of the **EU Commission's consultation on the Rule of Law Report 2025**. With regard to the **reform to safeguard the Federal Constitutional Court**, the DAV welcomes the progress made in the area of the resilience of the rule of law, but calls for further measures to protect the independence of the judiciary, including at state level. It also calls for further efforts to ensure the adequate funding and staffing of the judicial system as well as its digitalisation. This applies in particular to the continuing lack of digital recording of criminal court proceedings.
- (2) [ELiL](#)'s legal advice initiative, which was also launched in Poland in August 2022, now offers pro bono legal advice for refugees at six locations there. The project has also been expanded to include a hotline that operates in cooperation with local Ukrainian NGOs and community centres. Moreover, ELiL is now present on



the Polish-Belarusian border, where around 1,000 refugees cross the border every month and around 200 pushbacks - mostly Syrian, Afghan, Somali and Yemeni refugees - have been documented.

b) Human rights

- (1) To commemorate the **Day of the Endangered Lawyer**, DAV, in cooperation with the Republican Lawyers' Association and the Berlin Bar, organised an event on 23 January 2025 at the DAV House. The 2025 focus country was **Belarus**.
- (2) In a letter to the Russian embassy and in press statements, DAV called for an immediate end to the political persecution and release of **Alexei Navalny's lawyers**.
- (3) In December 2024, the DAV signed a joint statement of legal organisations and associations in support of the **Iranian human rights activist** Reza Khandan, husband of the Iranian lawyer and human rights activist Nasrin Sotoudeh.
- (4) With regard to **Turkey**, the DAV released a joint statement with other legal organisations concerning the imprisonment of lawyers Şiar Rişvanoğlu, Naim Eminoğlu and Doğa İncesu. In January 2025, the DAV also signed a statement on the state measures against the Istanbul Bar Association. At the end of February 2025, a DAV representative will be travelling to Turkey to attend the proceedings against the lawyers Nazan Betül Vangözü Kozağaçlı and Seda Şaraldı (members of the Progressive Lawyers Association) as a trial observer.
- (5) The DAV continued its involvement in the **humanitarian admission programme for Afghanistan**. In addition to co-signing several letters with the aim of continuing the programme, which has since been suspended, the DAV sent a letter to members of the Budget Committee of the German Bundestag in November 2024 requesting continued funding for the programme. In January 2025, after receiving information that Afghans waiting to leave Pakistan had been deported back to Afghanistan by Pakistani security authorities, the DAV initiated a joint appeal to the Federal Foreign Office to protect those affected, which was signed by 30 civil society organisations. The DAV is continuing its dialogue with the NGOs involved and is campaigning for a humanitarian and constitutional end to the programme.