

**DAV European Evening**  
**Welcoming address of DAV President Schellenberg**

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**Cercle de Lorraine**  
**Place Poelaert 6**  
**1000 Brussels**

**25 April 2018**

Ladies and Gentlemen,

I would like to welcome you all to the traditional European Evening of the German Bar Association here in Brussels.

This annual tradition is dear and important to us. We suspended it last year because we celebrated the 20th anniversary of our Brussels DAV office with you.

Also this year there are important anniversaries to celebrate in the European spirit:

The European Single Market is now 25 years old.

Built on the four fundamental freedoms as its pillars, the European internal market has long been an integral part of our daily lives.

Just think of the variety of products we find in our supermarkets and department stores from all over Europe. Today you can make cheap calls to all member states and enjoy carefree travel across all borders within Europe.

And the latter is still not self-evident today.

Of course, the European internal market has also significantly changed the way we practise our profession as lawyers.

The EU internal market has sharpened our competitive view within the legal profession and has initiated the modernisation of our professional law in important areas.

I am thinking, for example, of the release of extra-judicial fees, the relaxation of the ban on advertising and, of course - first and foremost - cross-border cooperation with our colleagues throughout Europe, which would not exist without the internal market.

Of course, the European internal market does not live by its four fundamental freedoms alone. It is decisively supplemented by secondary legislation. And so, with the directive on the establishment of lawyers, an important piece of legislation for the legal profession is celebrating its twentieth anniversary this year.

The Europeanisation of legal services and the mutual integration of lawyers into the diverse judicial systems in the European Union would not have been conceivable without this Establishment Directive.

Here, too, Europe has grown a good deal closer together.

It was not easy at the time to get the Establishment Directive off the ground.

You all know how difficult it is sometimes at European level to reach a workable compromise.

The CCBE, our European umbrella organisation, was very successful in balancing the different interests at that time, especially with the cooperation of our esteemed colleague and DAV honorary member Hans-Jürgen Hellwig.

This shows how important it is for the legal professions in Europe that with the CCBE we have a universally recognised umbrella organisation which - wherever necessary - raises the European voice of the legal profession.

The current negotiations on the UK's withdrawal from the European Union show - albeit in a rather painful way - the importance of the Establishment Directive for many colleagues currently working in another EU Member State.

In our opinion, it is right and important that the EU should, within the framework of these negotiations, narrowly define the "grandfathering" under the Establishment Directive.

In our opinion, "grandfathering" only covers those cases in which full integration has actually taken place by the deadline and within the framework of the transition phase.

In any case, this applies to the withdrawal agreement currently being negotiated and in no way means that the recognition of professional qualifications in a future free trade agreement with the United Kingdom cannot be given special emphasis.

Where do we stand after 25 years of the internal market?

The implementation of the European internal market is a political process. And as it is often the case here:

It's about the journey, not the destination.

The internal market can draw its strength precisely from the fact that it strives for further progress in all socio-political and technical developments.

The political message of the European internal market is: to set impulses - for the citizens and the economy.

Even small steps lead to success.

The German Bar Association welcomes the fact that an agreement has now been reached in the legislative procedure on the proposed directive on a proportionality test before adoption of new regulation of professions.

As you know:

The DAV was initially doubtful about this proposal and saw no need for a binding legal act. It was important for the DAV that the proposal be based above all on the principles of ECJ case law.

The political compromise now before us shows that our numerous discussions have led to a good result:

In accordance with the case law of the European Court of Justice, sufficient account is taken of the discretionary powers of the Member States in the regulation of professions.

It is important for us to explicitly recognise that different levels of regulation in the Member States do not necessarily mean that the comparatively stricter regulation is disproportionate.

The overall context is important here.

And the proportionality test itself must also be proportionate. At first glance, this may sound like a banality. But it's an important statement. It makes it clear that the testing

principles of the directive must be observed, but that the scope of the test also has its limits.

Last year, the European Commission called for a study to examine the impact of liberalising access to regulated professions on the quality of services. No reliable results of this study are available yet.

I believe, however, that another aspect needs clarification much more urgently:

Between 2003 and 2016, the number of cases filed with German civil courts fell by a third.

That doesn't mean people don't fight anymore. But we do not know where and how they settle their dispute.

It is important to find out why it is becoming increasingly rare to go to a state court despite access to legal aid and advice - and why these cases are not covered by out-of-court dispute resolution either.

To be even clearer, this is about access to justice and about why consumers are increasingly reluctant to exercise this fundamental right or perhaps no longer trust state justice in the same way.

And this is precisely why we need a reliable, empirical study.

All parties involved could learn from such a study in order to follow up the course of justice and understand where there is a lack of legal advice and what the situation is with regard to trust in the judiciary.

And of course we will not like everything we will learn in such a study on the administration of justice in general and the legal profession in particular.

But only those who accept their mistakes and deal with them can become better.

For this reason, we have placed this year's German Lawyers' Day in Mannheim under the motto "Error culture in the administration of justice".

Of course, you are all cordially invited to this lawyer's day from 6-8 June 2018.

What is the state of the European legal profession in 2018?

Of course, we are following the recommendations of the PANA Special Committee, which has reviewed the revelations around the Panama Papers, with great concern.

I am not concerned that the PANA Committee is addressing possible failures by EU Member States in the area of money laundering or tax evasion.

My concern, however, is that the line between legal tax avoidance and illegal tax reductions is not sufficiently respected.

I am also concerned that the PANA Committee is shaking the foundations of the legal profession, calling for both a reduction in professional secrecy and the abolition of self-government.

Only a vote in the plenary of the European Parliament stopped this demand.

But the plenum of the European Parliament has now also called on the EU Commission to examine the introduction of an independent, national supervisory authority.

You can't say it often enough:

"Self-administration" does not mean that the legal profession and the bar associations are not subject to control. On the contrary:

Self-administration also includes the state exercising supervision over the bars.

However, this only includes monitoring compliance with legal requirements, i.e. "legal supervision", as it is exercised by the Ministries of Justice in Germany vis-à-vis the bar associations.

There can be no supervisory authority with professional intervention rights beyond this if the independence of the legal profession is really taken seriously.

But that also means:

Modern self-administration must be transparent and democratic. It has to show it respects the concerns of the common good under the rule of law and actually enforces them vis-à-vis its' professionals.

And the importance of the independence of the legal profession as an elementary pillar of a country's rule of law can always be seen when it is no longer guaranteed.

During several visits to Turkey I learned in many discussions how much the Turkish legal profession is under state pressure and can no longer fulfil its role as an independent legal advisor.

Unfortunately, this also applies to other European countries such as Bosnia-Herzegovina, Georgia or Moldova, where it can be observed that the judiciary, and with it the legal profession, is being undermined in its role in ensuring the rule of law.

Judicial cooperation in the Union is not unaffected by this either. Just think of the decision of the Irish High Court a few weeks ago in connection with a referral to the European Court of Justice. The court refused to extradite a Polish citizen to Poland out of concern that a fair trial was not expected there.

This decision of the Irish High Court shows that the discussions on the rule of law and the Article 7 procedure - unfortunately - have a very practical dimension.

Compliance with the principles of the rule of law is "conditio sine qua non" for mutual trust and mutual recognition in the European legal area. Where this no longer exists, judicial cooperation within the EU will ultimately lose its basis.

In his speech to the European Parliament a week ago, President Macron said the important sentence: "Not authoritarian democracy is the solution, but the authority of democracy".

I would like to add "...and the authority of law".

If fundamental principles of the rule of law are questioned or no longer recognised and we allow the enforcement of the law to fail, then the legal structure in Europe,

which is in such an intact state, will start to show cracks - if the first cracks are not already clearly visible.

I am all the more pleased that on 24 January 2018 the Parliamentary Plenary Assembly of the Council of Europe called on the Committee of Ministers to establish a binding convention on the profession of lawyer.

This binding convention will help to stress and protect the important role of the legal profession in the administration of justice, in access to justice and thus also in strengthening the rule of law. The obligation to regularly monitor and report on compliance with the Convention in the signatory states will contribute to the protection of the legal profession.

The German Lawyers' Association wishes this initiative success and supports it with all its effort and strengths.

Ladies and gentlemen,

After months, the German government has now started its work in the new grand coalition.

At EU level, the final year of the parliamentary term has just begun with the Commission's latest proposals. A look at the coalition agreement of the German government reveals that similar topics will be the focus at both levels:

The EU Commission's proposal on e-evidence, published last week, has the potential to take cross-border evidence gathering in criminal law to a new level. We have called for fundamental rights and procedural rights to be guaranteed for those affected. We are pleased that the proposal already contains correct approaches to this and to the special protection of content data. Please be assured that the DAV will be involved in the discussions on the proposal.

Parallel to the initiative for class actions in Germany, the EU-Commission also submitted a proposal for collective redress proceedings in the consumer protection package presented on 11 April. The DAV supports this form of class action. However, there is no reason to exclude law firms from class action lawsuits. There is no doubt that the legal profession has the necessary competence in this matter and we have positively supported the discussion on class actions that has been going on for years.

We will also be concerned about the progress of the Brexit negotiations. From a lawyer's point of view, it is important how future judicial cooperation and mutual provision of services will be structured.

I believe that the Brexit is also an opportunity to strengthen Germany as a place of justice and jurisdiction.

We will discuss this next week on 2 May at an event with the State Representation of Hesse here in Brussels.

There is, of course, more at stake for the Union!

The question is: how much Europe do we want? What priorities do we want to set in future cooperation and what are we willing to do to achieve them?

It was therefore only logical that last year President Juncker focused on the future of the EU in his "Wind in our sails" speech.

Hardly anyone will be able to judge the European Union's course towards the wind as well as the keynote speaker this evening.

Dear Elmar Brok, you are not only a politician by passion, but also a European by passion.

As the longest-serving Member of the European Parliament - you have been a member since 1980 - you have not only helped this institution to achieve its current role as co-legislator.

You have also helped to negotiate and shape today's European Union in the crucial reform processes of Amsterdam, Nice and Lisbon.

But also as Chairman of the Committee on Foreign Affairs for many years, you have given the European Union a decisive foreign policy profile.

You are also coordinating the Brexit negotiations, the important setting of the course for the future, on behalf of the EPP Group.

Mr Brok, we look forward to hearing you after the second round on the state and future of the European Union.

I wish you, dear guests, a pleasant evening, stimulating conversations, and want to thank you for your attention.

Thank you!