

## **Just before the European elections: What has the DAV achieved?**

The five years since the 2014 European elections have been challenging for the EU: the keywords "financial crisis", "migration", "Brexit" and "rule of law" may suffice. Nevertheless, it's always about details: the DAV brings its legal know-how to Brussels, sometimes alone, sometimes with the legal profession from other countries.

The outgoing legislative period was marked by debates in which the DAV repeatedly had to promote attorney-client privilege, the self-administration of the Bars and the function of lawyers in upholding the rule of law. Nevertheless, many EU laws have consequences for law firms, even if certain burdens have been averted.

A great success due to the DAV is that the obligation of legal secrecy continues to take precedence over the right to data information under the General Data Protection Regulation, which has been in force since the end of May 2018. From the outset, the DAV has consistently fought for such an exception and has succeeded in taking the other European legal professions with it. According to the original draft of the General Data Protection Regulation, lawyers could have been forced to disclose protected client information.

EU legislation on money laundering and tax transparency entails numerous reporting and identification obligations for law firms that require a compliance system in law firms. In parallel to the German amendment of the Money Laundering Act in June 2017 (Burmeister/Uwer, AnwBl 2017, 1038), the 5th Money Laundering Directive 2018/843 was drafted in Brussels. With the directive, the central reporting offices may also address enquiries to law firms without specific cause. On a positive note: the exemption for client information already contained in the 4th Money Laundering Directive 2015/849 has not been infringed in the 5th directive.

The recommendations of the Pana Committee of Inquiry of the European Parliament on the "Panama Papers" were very critical of lawyers. For example, according to them, professional secrecy may not be used to protect illegal practices. Through a remarkable feat by all European lawyers' organisations, it was possible to prevent the European Parliament from immediately recommending the abolition of bar associations.

Another major point of contention was the directive introducing a reporting requirement for tax structuring models 2018/822 (EU). At least, the legal profession succeeded in allowing the member states to permit lawyers to invoke their duty of professional secrecy when transposing it into national law.

A success was achieved with the directive for an EU-wide minimum protection for whistleblowers against sanctions and reprisals: Whistleblowers may not divulge information that is subject to legal professional privilege. It has become clear time and again that, although legal professional secrecy must be absolutely protected, it is not unlimited.

Within the framework of the EU's services package, the DAV tirelessly promoted the fact that the law governing the profession of lawyer in Germany meets the standards of the internal market under EU law and that the standards which will be applied in future when reviewing changes to the law governing the profession will take into account the discretionary scope of the member states in the sense of the ECJ case law.

The bottom line is that the legislative period was dominated by security policy questions. The DAV will work to ensure that the pendulum will swing once again in the direction of freedom rights in the next five years.