



**transatlantic  
legal  
conference**

#tlc19

// April 5, 2019

// Frankfurt

// Institute for Law and Finance



INSTITUTE FOR LAW AND FINANCE

GOETHE-UNIVERSITÄT FRANKFURT AM MAIN

**DAJV**

Deutsch-Amerikanische  
Juristen-Vereinigung e. V.

[www.dajv.de](http://www.dajv.de)

# See you in Frankfurt!

## Join the Transatlantic Legal Conference 2019

Our Transatlantic Legal Conference is the revamped and more focused version of our traditional Working Group Day (Fachgruppentag). The Transatlantic Legal Conference is – alongside the Annual Conference – the flagship event of the DAJV and open to all interested persons. It is co-organized by the DAJV working groups, which are forums that foster an intellectual and practical exchange among lawyers from all professions. The working groups present and discuss current topics and cases of transatlantic relevance with recognized experts from the US and Germany. Our four working groups cover the following areas of law: 1) Arbitration/Litigation/Mediation, 2) Antitrust/Regulated Industries/Media, 3) Constitution/Legislation/Public Law and 4) Mergers & Acquisitions. Each DAJV member may become a member of one or more working groups.

The event concludes with a festive dinner, along with a dinner speech by [Frank Sportolari](#), President of the American Chamber of Commerce (AmCham) in Germany e.V.



Christian A. Krebs  
Coordinator of the Transatlantic Legal Conference



# Program

April 5, 2019 // Frankfurt // Institute for Law and Finance

● **Pre-Conference Young Professionals  
Blockchain Bootcamp // in cooperation with Jones Day**

● **Transatlantic Legal Conference  
with panel sessions of DAJV Working Groups:**

● **ALM (Arbitration, Litigation, Mediation)**  
Climate Change: A new frontier and climate for  
dispute resolution?  
(Session 1, 2.30 p.m. - 4.00 p.m.)

● **ARIM (Antitrust, Regulated Industries, Media)**  
Legal transformation from an inhouse perspective – big ideas  
and the corporate legal department reality  
(Session 2, 5.00 p.m. - 6.30 p.m.)

● **CLPL (Constitution, Legislation, Public Law)**  
Legal challenges of autonomous systems  
(Session 2, 5.00 p.m. - 6.30 p.m.)

● **M&A (Mergers & Acquisitions)**  
The MAC is back! – Lessons from Akorn/Fresenius for  
cross-border dealmaking  
(Session 1, 2.30 p.m. - 4.00 p.m.)

● **Timeline**

- 1.30 p.m. **Check-In**
- 2.15 p.m. **Welcome Remarks**
- 2.30 p.m.- 4.00 p.m. **Session I**
- 4.00 p.m. **Coffee Break**
- 5.00 p.m.- 6.30 p.m. **Session II**
- 6.30 p.m. (end 10.00 p.m.) **Reception & Dinner**

# ALM // 2.30 p.m. - 4.00 p.m.

## Arbitration, Litigation, Mediation

### Climate Change: A new frontier and climate for dispute resolution?

Climate change is now firmly on the global agenda, prompting action by political and business leaders around the world. A new class of dispute resolution has been created, with a still unclear shape. Different actors have been innovative in using different legal regimes to address environmental and climate change issues. Green investors have resorted to international arbitration to resolve disputes related to, among others, incentives and government failures to enforce environmental laws. However, it seems that more climate change litigations have been brought in domestic courts. We would like to discuss what these trends mean, and how international tribunals can support climate change goals. Is arbitration or litigation better suited to support the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement? Do we need clearer guidelines for these type of disputes? Which role has climate policy played in investment arbitration? Do the US or Dutch model BITs help to promote sustainable development?

#### **Moderator**

**Dr. Alexandra Diehl, LL.M.** (Suffolk)  
Local Partner, White & Case, Frankfurt am Main

#### **Speakers**

**Gerard J. Meijer**  
Partner, NautaDutilh, Amsterdam

**Michael Polkinghorne**  
Partner, White & Case, Paris

**Prof. Julian Cardenas Garcia**  
University of Houston

**Emanuela Gallo**  
Vice President Legal Affairs Department, Eni, Milan

**Serena Beghetti**  
Manager Legal Affairs Department, Eni, Milan

# ARIM // 5.00 p.m. - 6.30 p.m.

## Antitrust, Regulated Industries, Media

### Legal transformation from an inhouse perspective – big ideas and the corporate legal department reality

Legal industry transformation has been the talk of the town in Germany for three or four years. However, realities in corporate legal departments and the law firms traditionally serving them often look very different from academic discussions. Daniel Biene will host a panel of inhouse lawyers and innovative service providers. This panel will discuss the transformation of inhouse teams and the respective approach of non-law firm providers working with them. Panelists will provide insights into different practical use cases in order to show how innovation and (legal) tech are influencing work streams, and how this is relevant for their organizations. Furthermore, the panel will allow for a comparison of the situation in the U.S. with developments in Europe, to shed light on where both markets are headed.

#### **Moderator**

**Dr. Daniel Biene, LL.M** (New York)

Managing Director, axiom, Germany and Switzerland

#### **Speakers**

**Dr. Anja Costas-Pörksen**

Senior Legal Counsel, Deutsche Bahn, Berlin

**Sally Robertson**

Chief Executive Officer, Stirling Blue, Stockholm

**Simon Ahammer**

Business Unit Manager Legal, smartwork solutions, Munich

# CLPL // 5.00 p.m. - 6.30 p.m.

## Constitution, Legislation, Public Law

### Legal Challenges of Autonomous Systems

The digital world opens up the possibility to monitor product states - manufacturers will be able to track the condition of products in real time. The product monitoring required by product liability is based on the assumption that products in the market are not subject to close control by the manufacturer - on the grounds that the manufacturer cannot provide close product monitoring at all. This panel deals with the question whether the new technology leads to new challenges and to a tightening of liability for manufacturers, e.g. of autonomous systems and the acting persons.

In addition current and future liability questions especially of autonomous driving will keep regulators, judges and arbitrators busy. The speaker will give practical insights and will address the legal/technical questions that are currently being discussed. The contribution will focus on peculiarities of recourse related to autonomous driving within the supply chain and on new challenges for regulators and judges as well as arbitrators.

#### **Moderator**

Apl. Prof. Dr. Jutta Stender-Vorwachs, LL.M. (Virginia)  
Gottfried Wilhelm Leibniz Universität Hannover

#### **Speakers**

**Dr. Kuuya Josef Chibanguza**

Senior Associate, Luther, Hannover  
Director, Interdisciplinary Institute for Automated Systems  
(RifaS), Hannover

**Christian M. Theissen**

Partner, White & Case, Frankfurt am Main

# M&A // 2.30 p.m. - 4.00 p.m.

## Mergers & Acquisitions

### The MAC is back! - Lessons from Akorn/Fresenius for cross-border dealmaking

The landmark decision by the Delaware Court of Chancery in Akorn/Fresenius (which was subsequently confirmed by the Delaware Supreme Court) not only drew a line under a bitter battle between Fresenius and Akorn whether Fresenius rightfully pulled out of the acquisition of Akorn, it also was the first time ever that the Delaware court released a purchaser from its obligation to close by invoking a Material Adverse Change (commonly referred to as "MAC"). As a result, the MAC was catapulted back high up on the agenda of M&A practitioners, and the widely commented decision triggered a fresh look at the ways MACs are used in M&A deals on both sides of the Atlantic. The decision is interesting on a number of levels. First, the decision deals squarely with the central question about what type of adverse events could constitute a Material Adverse Change and also addresses the issue whether (and under which circumstances) events that already existed at the time of signing can still constitute a MAC. The decision also highlights structuring and drafting issues that are frequently and heavily negotiated between purchasers and sellers. For instance, so-called „bring-down“ conditions, which allow a purchaser to refuse to consummate a transaction if a seller has materially breached (certain) representations and/or interim operating covenants post-signing, were included in the Akorn/Fresenius

merger agreement. Although a very common feature in US M&A deals, the inclusion of „bring-down“ conditions in Germany and in Europe is generally fiercely resisted and is often seen as an unfair allocation of risk. This session will take a closer look at the specific legal issues and practical challenges related to the MAC both from the US and German legal perspective. It will also discuss ways on how to address them in practice.

#### Moderators

**Dr. Michael Fischer**, LL.M. (Dickinson)  
Partner, Jones Day, Frankfurt am Main

Christian Krebs, LL.M. (Harvard)  
Partner, Jones Day, Frankfurt am Main

#### Speakers

**Prof. Dr. Thilo Kuntz**, LL.M. (Chicago)  
Bucerius Law School, Hamburg

**Dr. Jan Bauer**,  
Partner, Skadden, Arps, Slate, Meagher & Flom LLP,  
Frankfurt am Main

**David Quartner**, J.D. (Columbia)  
European Counsel, Skadden, Arps, Slate, Meagher & Flom LLP,  
Frankfurt am Main

# Pre-Conference // 9.00 a.m. - 12.30 p.m.

## DAJV Young Professionals

### Blockchain Bootcamp // in cooperation with Jones Day

Whereas Bitcoin is often referred to as the “mother of all bubbles”, the technology under the hood is way more than that. In fact, blockchain technology and its multiple applications may be transforming our society rapidly, putting increasing pressure on the legal market to keep pace with technical reality. Though the blockchain technology is still under development, one thing is arguably clear: No aspiring legal professional wants to get stuck in 20th century thinking. The bootcamp provides you with a comprehensive overview of the blockchain technology and an insight into the legal issues surrounding its application.

**In small teams with other Young Professionals you will explore some of the hot legal blockchain issues:**

- *What is blockchain in legal terms?*
- *What are smart contracts?*
- *Smart contracts, do they make lawyers superfluous?*
- *How to deal with contract law and general terms and conditions on the Blockchain?*
- *ICOs or STOs, legal means of financing in Germany?*
- *Cybersecurity and data protection on the Blockchain – squaring the circle?*
- *Patents and licenses – the hidden time bombs?*

#### DAJV

Isabel Cagala, Head of DAJV Young Professionals

#### Jones Day

Christian Krebs, LL.M. (Harvard), Partner

Ted-Philip Kroke, Partner

Dr. Nick N. Wittek, Partner

Dr. Michael Fischer, Partner

Andreas Holzwarth-Rochford, Partner

#### Venue

Jones Day

NEXTOWER

Thurn-und-Taxis-Platz 6

60313 Frankfurt am Main

#### Registration

Please send your binding application stating the level of education or job title until 25th March 2019 to [mail@dajv.de](mailto:mail@dajv.de)

April 6, 2019 // 11.00 a.m. - 12.30 p.m.

City Tour Frankfurt



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### City Tour

The Neue Altstadt - Rotes Haus, Goldene Waage and the Hühnermarkt

A tour to Frankfurt's new Old Town explains the reconstruction concept and the history of some of exemplary houses.

Start: 11.00 a.m.

Language: German and English

Please note that the number of participants is limited.

# Registration

## Online registration

Please register on our website or via XING Events until March 29 at:

<https://en.xing-events.com/TLC2019.html>



## Contact

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## Photo Disclaimer:

We take the liberty of publishing photos taken during our event.

Please inform us if you do not wish photos of you or your companion to be published on our website, social media channels or printed matter.

## Conference fees

TLC including drinks and snacks, reception and dinner with alcoholic beverages, and optional Frankfurt city tour

### DAJV members

|                                      |            |
|--------------------------------------|------------|
| DAJV member                          | 190,00 EUR |
| Government/academia/judges           | 110,00 EUR |
| Student/law clerk/doctoral candidate | 60,00 EUR  |

### Non-members

|                                           |            |
|-------------------------------------------|------------|
| Person working at a DAJV corporate member | 190,00 EUR |
| Individual person                         | 220,00 EUR |
| Student/law clerk/doctoral candidate      | 70,00 EUR  |
| Guest (dinner only)                       | 60,00 EUR  |

## Contact

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German-American Lawyers Association

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## More information

[www.dajv.de](http://www.dajv.de)