



PROPOSED BY **DS GRANER** LAWYERS AVOCATS

In our newsletter we would like to inform you regularly about news and general information in the field of law and business in Europe and Germany in particular. We hope you find this useful and wish an enjoyable read!

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NEWS RELATED TO THE CORONAVIRUS PANDEMIC (COVID-19) – 2021-04-26

Recent developments and measures

Due to the continuing **high number of Corona infections** and **new Corona mutations**, legal restrictions continue to apply in all areas of economic, public and social life in Germany.

The federal government has now passed a new law, the so-called “**Emergency Brake**”, to ensure a uniform pandemic response. In the event of high incidence levels, night-time curfews, contact restrictions and business closures will apply nationwide.

As things stand, more than **17 million people** in Germany have received at least one vaccination dose against the Corona virus. Over **5 million** have already received their second vaccination and are considered immune. This corresponds to approx. **6.9 %** of the population.

(1) EU measures

The Corona vaccines from the companies **BioNTech, Pfizer, Moderna, AstraZeneca** and **Janssen Pharmaceutica NV** are currently licensed in the EU.

Blood clots have occurred in rare cases in connection with the administration of **AstraZeneca's vaccine**, so several EU Member States have suspended the administration of this vaccine.

The European Commission has signed a **second contract** with the pharmaceutical company **Moderna** for the additional supply of **300 million doses of vaccine**.

In addition, the EU has adopted the following further measures in the **fight against the Corona virus**:

- The EU Commission has decided that vaccine produced **in the EU** requires regulatory approval before export to countries **outside the EU**.
- The EU Commission proposes a **digital travel certificate** to facilitate travel during the pandemic. According to the proposal, the certificate should contain proof of vaccination, a negative test or recovery from Covid-19.
- The Commission has proposed emergency measures to better prepare Europe for the growing threat of coronavirus variants:

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Research, biotechnology companies, manufacturers and authorities from the EU and around the world will work together to detect new variants, incentivize the development of new and adapted vaccines, speed up the approval process for these vaccines and increase production capacity.

(2) Governmental measures in Germany

In the area of the economy, the following innovations were adopted in the fight against the pandemic:

- Companies in Germany are obliged to propose a Corona virus test to their **employees** at least **once a week**.
- Employees are obliged to **work from home** wherever possible.
- With the new so-called "**Bridging Aid III**", companies with an annual turnover of up to 750 million euros are supported. The new aid provides for a state **equity grant** for companies, an increase in the **reimbursement of fixed costs up to 100 %** and special **depreciation options**.

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FURTHER NEWS RELATED TO TRADE AND LAW

German Federal Government introduces Supply Chain Law!

Based on the German government's draft legislation, from 2023, larger German companies with more than 3,000 workers shall be required to comply with and monitor **human rights** and **environmental standards** along their **supply chains abroad**. These obligations shall then be extended to companies with 1,000 workers from 2024. In this way, the legislator wants to prevent **child labour, inhumane working and production conditions** and **environmental violations** such as deforestation or air pollution in particular. In case of violations, companies face **high fines** or even **exclusion from public contracts**. **German buyers will therefore have to closely observe if their suppliers comply with human rights and environmental standards and will strictly choose only compliant suppliers.** In detail, the draft legislation, which is expected to be approved by the Federal parliament soon, contains the following regulations:

- (1) Companies are obliged to introduce a **risk management system**. For example, a human rights officer must be employed.

- (2) Companies must conduct a **risk analysis**, i.e. investigate whether human rights or environmental violations are taking place in their own business or at suppliers.

- (3) Companies must implement appropriate **preventive or remedial measures**.

In practice, the law will mainly affect companies with global supply chains, such as the automotive or textile industries.

EU Commission proposes common rules in the field of Artificial Intelligence

The first European legal framework in the field of **artificial intelligence** aims to protect the security and **fundamental rights of people and companies** in this area. According to this, all systems are to be divided into different groups and **restricted depending on the potential danger** to the rights of people and companies. The use of artificial intelligence for generalised surveillance or manipulation of the population is completely prohibited, as is so-called social scoring, in which people are evaluated on the basis of their social behaviour.

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● **German Competition Register starts operation**

The **Competition register** is intended to give public contracting authorities the possibility to check whether a company has to be excluded because of certain economic offences.

This is to ensure that only reliable companies are selected in **award procedures**. In future, public contracting authorities will be obliged to consult the competition register before awarding contracts with an estimated **contract value of 30.000,00 EUR** or more. If there are entries in the Competition Register, bidders must be excluded.

● **New International Commercial Court in Stuttgart**

In order to offer **international companies** a real alternative to **arbitration proceedings**, a new chamber for international commercial disputes has been established at Stuttgart's state court. The choice of this court offers the following advantages to internationally aligned companies:

- (1) Judges are **experts** in **international commercial law** and have professional experience in international companies and commercial law firms.
- (2) The language of the court can be **English** if necessary.
- (3) **State resources** are available for taking evidence.
- (4) Costs for large-scale proceedings are **capped**.

● **Validity of an arbitration agreement is also governed by the CISG**

According to its latest case law on arbitration (cf. BGH, Judgement of 26.12.2020 – I ZR 245/19), the highest German Federal Court (BGH) has come to the conclusion that the CISG also becomes relevant to the question of whether the parties have agreed on an arbitration agreement in cross-border commercial transactions. In future, parties to arbitration agreements will have to observe **Art. 8 CISG** and **Art. 14 et seq. CISG**. The BGH argues with the interpretation of Art. 81 para. 1 sentence 2 CISG and relies on the fact that the autonomy of the arbitration clause does not mean that it is subject to a different law than the main contract itself.

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● **Federal government presents first plans for an e-GmbH!**

The German legislator has passed a draft implementing the **European Digitalisation Directive**. The directive is intended to simplify the formation of companies throughout Europe. From **2023**, it will be possible to establish a GmbH (limited liability company under German laws) online, entries in commercial and company registers will also be made in an online portal and all registers of the member states will be networked in a European system.

● **Government draft of a tax haven defence law**

The German government has published a draft law on the defence against **tax avoidance** and **unfair tax competition**. The draft law aims to dry up tax havens. According to the bill, companies and individuals who maintain business relations with countries on the EU's blacklist must expect tax restrictions.

● **EU Whistle-blower Directive**

Germany must implement the new **EU Whistle-blower Directive** by the end of this year! The aim of the directive is to uncover violations of EU law at an early stage and **to better protect whistle-blowers** from the internal company and governmental consequences that are to be feared as a result of reporting. Suspension, dismissal or denial of promotion by the company as a result of the report are thus ruled out by law. To better protect whistle-blowers, companies with more than 50 employees, public authorities and municipalities will be obliged to set up confidential reporting channels with an anonymous communication system.

● **Legal transactions between EU and GB currently significantly more difficult!**

With the UK's exit from the EU, cross-border legal transactions are no longer governed by the **Brussels I Regulation**, making litigation much **more time-consuming and costly**. For this reason, the UK and the EU are negotiating accession to the so-called **Lugano Agreement**, which would significantly simplify legal transactions due to uniform regulations.

● **Recent European Anti-Dumping Measures**

(1) The European Commission imposes new **anti-dumping duties** on imports of **glass fibre filament products** originating in the People's Republic of China. The duty rate ranges from **7.3% to 13.8%** depending on the company.

(2) The European Commission imposes a definitive **anti-dumping duty** on imports of certain **aluminium products** originating in the People's Republic of China. The duty rate ranges from **21% to 32%** depending on the company.

(3) The European Commission imposes a definitive anti-dumping duty on imports of **sulphanilic acid originating** in the People's Republic of China. The rate of the duty is **33.7%**.

(4) The European Commission notes that **Hunan Legend Porcelain Industry Co, Ltd.** is also subject to an **anti-dumping duty of 17,9%** on **ceramic kitchenware articles** originating in the People's Republic of China.

(5) The European Commission is initiating a new **anti-dumping proceeding** concerning imports of **optical fibre cables** originating in the People's Republic of China.

● **Recent major insolvency proceedings**

These important companies with a turnover of **more than 20M €** filed for insolvency:

- Askania GmbH
- Bleyer Gmb
- Die Krankenhaus Land Hadeln Otterndorf GmbH
- ELTEC GmbH
- Flughafen Friedrichshafen GmbH
- Greensill Bank AG
- Illerplastic Fensterbau GmbH
- Martin Kirschner GmbH
- Nobiskrug GmbH

In contrast to the previous months, there have been signs of an increase in insolvencies since **February 2021**. Those affected are especially micro-enterprises and the self-employed. According to insolvency experts, this is due to the ongoing pandemic and its economic consequences. The suspension of the obligation to file for insolvency for certain companies ends on **30 April 2021**, so experts forecast a considerable **increase of insolvencies**.

SPECIAL TOPIC *Insolvency Procedure & Retention of Title*

According to experts, the number of corporate insolvencies in Germany might considerably rise this year due to the economic consequences of the pandemic. For this reason, we would like to prepare **suppliers** for such scenario. In a legal check, current and future **sales contracts, general terms and conditions and/or framework contracts** must be examined for their insolvency protection and, if necessary, adapted.

A look at the past shows that sales contracts without sufficient insolvency protection led to considerable losses of claims. In insolvency proceedings opened in Germany and terminated by the end of 2019, unsecured creditors recovered on average **only 3.8%** of their claims. Creditors' losses amounted in total to **EUR 16.6 billion** per year.

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The best protection against the buyer's insolvency in Germany is provided by **Retention of Title clauses (RoT)** agreed among the parties in the contractual documents. In German business practice, three main types of **retention of title** clauses are differentiated:

Simple RoT

Goods supplied remain the seller's property until payment of the full purchase price.

In the event of insolvency, the creditor can request return of the goods available at the buyer's warehouse.

Extended RoT

All goods remain the seller's property until payment of all outstanding invoices from the parties' business relationship.

In the event of insolvency, the creditor can request return of the goods available at the buyer's warehouse.

Prolonged RoT

In spite of RoT, the buyer is allowed to resell the goods to third parties against prior assignment of the claims resulting from the resale to the seller.

In the event of insolvency, the creditor can demand satisfaction from the realisation proceeds from the collateral!

*By using the right retention of title clauses in the sales contract, foreign sellers can considerably **mitigate risks** and **improve the debt collection results** significantly. We will be happy to advise you on your exact needs and help you draft your supply contracts with German buyers.*



For more information:

DS Graner Lawyers Avocats

Griegstraße 27 B 70195 Stuttgart / Germany
Tel.: +49 711 16260 - 0 Fax: - 18
www.ds-graner.com info@ds-graner.com

Paris Beijing Shanghai Shenzhen Stuttgart Toronto Montreal Vancouver Ottawa Québec Ho Chi Minh City Hanoi Singapore
Barcelona Madrid Milan Brussels Buenos Aires Santiago Lima Bordeaux Lille Lyon La Réunion Dakar

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