HENGELER MUELLER

Latin America Desk Newsletter

The purpose of this newsletter is to highlight the key legal developments and business trends in Germany and other parts of Europe in the first half of 2017. We have also included a few transactions which we have recently advised on, including the ones where we have worked jointly with our 'Best Friend' firms in Europe.

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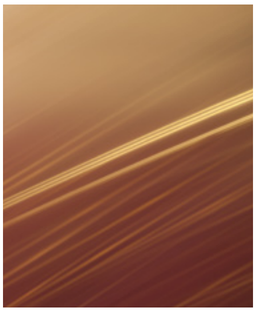
Brexit – An Update

Nine months after the United Kingdom European Union membership referendum, in which 51.9 per cent of the electorate voted for a Brexit, the process finally started: on 29 March 2017, the withdrawal notice pursuant to Article 50 of the Treaty on European Union was officially handed over to the President of the European Council.

This date denotes the starting point of a two-year-period after which the UK will effectively exit the EU. This two-year-period can only be extended by a unanimous decision of the European Council acting in agreement with the UK. Each of the 28 Member States has a seat in the European Council.

It is generally anticipated that a two-year-period will not be sufficient to reach agreement on all consequences of Brexit, or even on the details of future co-operation between the EU and the UK. An extension of this negotiation period appears unlikely in light of the aforementioned requirement of unanimity. In recent months, this has increasingly led to demands for transitional rules. However, it is completely uncertain at this time whether the time agreement on such transitional rules is realistic.

Consequently, all planning of future business models must include the possibility that there will be no agreement on the future co-operation between the EU and the UK and that the UK will be treated like a third country after 29 March 2019. All companies which are likely to be affected by the Brexit should therefore act now and prepare the structure of their business models with effect of the effectiveness of the Brexit.



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In addition, all contractual agreements, including for financing and M&A, subject to, or referring to, UK law should be carefully reviewed in light of the upcoming Brexit. In particular, it is advisable to include arbitration clauses in M&A contracts, since the foreign arbitral awards are recognized and enforceable under the New York Convention irrespective of a Brexit.

Compliance with GDPR

The EU General Data Protection Regulation ("**GDPR**") was approved and adopted by the EU Parliament in April 2016. The regulation will take effect after a two-year transition period and will come into force on 25 May 2018.

The GDPR replaces the Data Protection Directive 95/46/EC and is designed to harmonize data privacy laws across Europe, to protect and empower all EU citizens' data privacy and to reshape the way organizations across the region approach data privacy.

The GDPR not only applies to organizations located within the EU but it will also apply to organizations located outside of the EU if they offer goods or services to, or monitor the behavior of, EU data subjects. It applies to all companies processing and holding the personal data of data subjects residing in the European Union, regardless of the company's location.

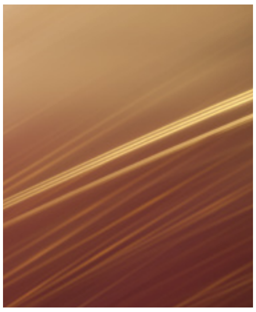
Organizations can be fined up to 4 per cent of annual global turnover for breaching GDPR or EUR 20 million. This is the maximum fine that can be imposed for the most serious infringements.

Investment in real estate in Germany

With a gross value of more than EUR 500 billion (USD 560 billion), Germany's real estate industry is responsible for an impressive 18 per cent of Germany's economic output. The multifaceted ownership structure in the housing market and high financial security requirements for mortgages make the industry quite stable. Germany also has several strong cities with attractive commercial real estate markets.

Especially, given the current political and economic uncertainty across parts of Europe and beyond, factors like solid political framework, strong economy, stability and transparency are playing an important role in attracting real estate investors to Germany. In fact, Germany is now being spoken of as the new safe haven of choice for investors in Europe.

According to a recent report, the real estate market recorded a transaction volume of EUR 12.6 billion in the first quarter of 2017, its strongest first quarter on record, with logistics and residential taking up an ever-increasing share of portfolios.



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Changes in Foreign Investment Control in Germany

On 12 July 2017 the German government has adopted the 9th Ordinance Amending the Foreign Trade and Payments Ordinance. The ordinance introduces new rules on the control over and approval of foreign investments in German businesses by the Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie, "BMWi"). The primary purposes of the new regulatory framework are to ensure fair competitive conditions, in particular in view of more protectionist foreign economic systems, and to efficiently protect the security interests of the Federal Republic of Germany in light of a continuously increasing number of foreign investments into German companies, a constantly growing significance of key infrastructures and a rapid development of military and defense technology. The new rules came into force on 18 July 2017.

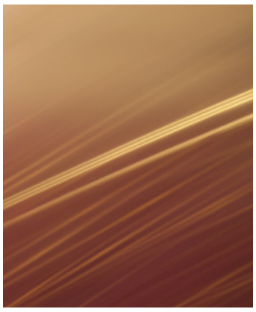
The changes aim to increase governmental control of foreign M&A transactions, in particular by widening the scope of sector-specific scrutiny and refining the notion of public order or security with reference to certain types of "critical" sectors (e.g., energy, health or water) and businesses. Such critical businesses include in particular certain areas of information technology, the development or modification of industry-specific software, certain cloud computing services and organizational measures in relation to telecommunication surveillance measures.

Due to the new rules, most of the relevant timeframes, investigation and review periods have been extended. In particular, in case of the cross-sectoral investment review, the BMWi will have (i) a 2 months' period to evaluate a foreign investor's application to obtain a clearance certificate for a deal before it is deemed approved (as of now: deemed consent after 1 month), and (ii) after opening a formal examination procedure, a 4 months' period upon receipt of the complete documents by the acquirer to reject clearance (as of now: 2 months). If negotiations take place, the 4 months' period will be suspended for the duration of such negotiations (as of now: no corresponding provision). If a deal is already closed at the time of rejection, a trustee can be appointed at the cost of the foreign investor to unwind the transaction (as of now: no explicit cost provision).

The revised German foreign investment control will have considerable importance for M&A transactions by foreign investors on the German market. Even more than before, foreign investors should pay particular attention to German foreign investment control at an early stage of their investments in Germany.

M&A Market in Germany

As per a recent survey, Germany has been voted Europe's most attractive business location, joining China and the USA in the global top three business locations. Leading economy, stable political framework, highly skilled workforce benefitting from a world class education system, billions of euros in annual federal funds for R&D, top quality infrastructure and high standard of living, are some of the reasons frequently cited for making Germany a popular destination for investments.



Like in 2016, 2017 also seems to be a good year for inbound M&A in Germany. Whilst in 2016, there were a total of 487 deals; until May 2017 there have already been 150 transactions.

The trend towards a seller-friendly M&A market still continues in Germany. Among the conditions which strengthen sellers' positions most are cheap financing, high fund amounts waiting to be invested and a limited number of attractive target companies.

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Private equity deals in Germany

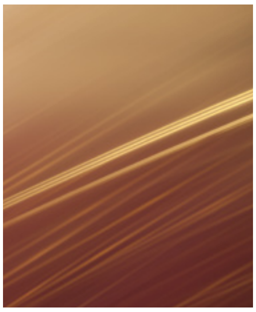
In July this year, Stada Arzneimittel AG, a publicly-listed pharmaceutical company based in Germany, agreed to back a revised takeover bid from buyout groups Bain Capital and Cinven, which have secured backing from investors controlling around 20 per cent of the total shares. The revised offer is approximately EUR 16 million above the prior offer of EUR 5.3 billion.

Germany's Federal Financial Supervisory Authority (BaFin) has approved the revised offer, waiving Bain Capital and Cinven from a one-year ban from resubmitting a revised offer.

Earlier, the takeover attempt of Bain Capital and Cinven had failed because the necessary acceptance threshold by the shareholders was not reached.

The Stada deal is an example of complex and voluminous private equity transactions and also demonstrates the investment pressure that the private equity firms are currently facing. According to a recent estimate by a research company, European private equity funds are sitting on USD 167.8 billion of liquidity, the highest level since 2008. If the Stada deal goes through, it would be the largest ever private equity takeover in Germany.

There has also been an increased interest of other private equity firms in public takeovers. For example, the consortium comprising Advent and Permira had also made a bid to acquire Stada for EUR 4.7 billion.



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Recent transactions

Hengeler Mueller advised HENSOLDT Holding Germany GmbH ("**HENSOLDT**") on its acquisition of EuroAvionics Holding GmbH. HENSOLDT, emerged from the sale of Airbus' defence electronics business, is a world leading provider of premium sensors for protection, surveillance and situational awareness.

Hengeler Mueller advised Blackstone and M 7 Real Estate on the acquisition of the light industrial property portfolio of Britain's Hansteen Holdings in Germany and the Netherlands.

Hengeler Mueller advised CVC Capital Partners, one of the world's leading private equity and investment advisory firms, on its acquisition of Etraveli, a global flight-centric online travel agency (OTA), from ProSieben Sat.1.

Hengeler Mueller advised Dr. August Oetker KG on the sale of Hamburg Süd (German container shipping line) to Maersk Line A/S.

Hengeler Mueller advised CRH, a leading global listed building materials company headquartered in Dublin, on the sale of OPTERRA Zement GmbH to Schwenk Zement.

Hengeler Mueller advised United Internet on the step-by-step acquisition of 1&1 Telecommunication SE by Drillisch under the umbrella of United Internet with the aim to merge United Internet's mobile and fixed-network business with Drillisch's mobile communications business, and the parallel voluntary public tender offer by United Internet to all Drillisch shareholders.

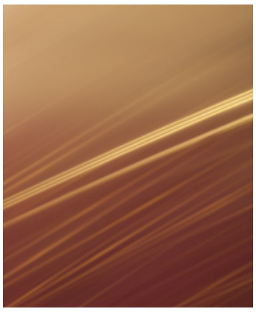
Hengeler Mueller advised Epigenomics AG on the proposed takeover by Summit Hero Holding. Epigenomics is a molecular diagnostics company focused on blood-based detection of cancers using its proprietary DNA methylation biomarker technology.

Hengeler Mueller advised Pfeiffer Vacuum Technology AG on the proposed takeover by Busch.

Hengeler Mueller advised VTG, one of the leading railcar leasing and rail logistics companies in Europe, on the financing of the acquisition of CIT Rail Holdings (Europe) SAS and the associated NACCO Group, the fourth largest private rental company of rail freight cars in Europe as well as on corporate and capital markets law aspects of the transaction.

Hengeler Mueller advised ETD, a strategic platform company based in the UK and owned by Bain Capital Private Equity (a leading global private investment firm) on the acquisition of REIFF's Tyre and Automotive Technology division, the leading independent multi-channel tyre distributor in Germany, which operates across the entire value chain.

Hengeler Mueller advised the private equity firm EQT on its investment in Otto Bock, which is headquartered in Germany and is active in the fields of prosthetic, orthotic products, human mobility and medical care.



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Hengeler Mueller advised the Waelzholz Group, the global market leader in high-quality cold rolled and heat-treated steel strips and profiles, on the acquisition of Theis Kaltwalzwerke.

Hengeler Mueller advised Techmation, the Taiwanese control manufacturer, on investment in PA Power Automation, a German hightech company.

Hengeler Mueller advised Advent International and Bain Capital Private Equity on the acquisition of Ratepay GmbH, the German online payment services arm of the Otto Group.

Hengeler Mueller advised KKR on Squeeze-out of GfK SE, a leading global market research company, listed on the Frankfurt Stock Exchange.

Hengeler Mueller advised Australia-based Sonic Healthcare on the acquisition of Medical Laboratory Bremen.

Hengeler Mueller advised Swiss private equity company Capvis Equity Partners on the acquisition of Europe's leading B2B marketplace "Wer liefert was" from the previous majority shareholders Paragon Partners and Nordic Mezzanine. "Wer liefert was", is an online platform for professional purchases providing access to millions of products and services in the B2B segment.

Hengeler Mueller advised the Felix Schoeller Group, a specialty paper manufacturer headquartered in Germany, on a 50/50 joint venture with the Welbon Group, China. The joint venture will be focused on production of specialty papers in China.

Hengeler Mueller advised Leoni, a leading provider of cables and cable systems to the automotive sector and other industries, on the sale of electrical appliance assemblies business to BizLink, Taiwan.

Hengeler Mueller and Houthoff Buruma advised Vitol on the acquisition of OMV Petrol Ofisi Holding A.S ("**Petrol Ofisi**") from OMV AG, the international integrated oil and gas company.

Hengeler Mueller and **Bredin Prat** advised PSA Groupe on the acquisition of General Motor's Opel and Vauxhall's businesses valued at EUR 1.3 billion. **Hengeler Mueller** and **Bredin Prat** also advised PSA Groupe, which along with BNP Paribas acquired General Motor Financial's European operations, valued at EUR 900 million, through a newly formed 50/50 joint venture.

Hengeler Mueller, **Bredin Prat** and **Uria Menendez** advised Bosch on the worldwide carve-out of the Starter Motors and Generators division and the subsequent sale to Zhengzhou Coal Mining Machinery Group and China Renaissance Capital Investment.

About the firm's Latin America Desk

The Latin America Desk advises Latin American companies and financial investors on their business activities in Germany and throughout Europe and in accompanying German companies and financial investors to Latin America. Members of the Latin America Desk regularly visit Latin America to meet corporates, financial investors and law firms and to attend conferences.

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