India 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 second half of 2020 and early 2021. We have also included a few transactions which we have recently advised on.

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I. Supply Chain Law in Germany and the European Union

In the European Union as well as on a national basis in Germany, there are currently broad discussions on possibilities for ensuring environmental, social and governance standards (ESG) across the entire supply chain. While some EU member states have already introduced laws regarding minimum ESG standards within supply chains, there is no European legal framework dealing with this topic and reform discussions. On 3 March 2021, the German government published a draft duty of care act and as set out in the coalition agreement, it is planned to pass the national law in Germany regarding supply chains before the end of this legislative period (Sept. 2021).

The draft will capture German-based companies with at least 3000 employees worldwide as of January 2023 and companies with at least 1000 employees as of January 2024. According to the draft law, such businesses will have to implement substantial new due diligence policies and procedures on human rights protection. The due diligence obligations are focused on the company’s own business environment and direct suppliers but indirect suppliers may need to be included in the due diligence assessment as well. Non-compliance with the due diligence obligations would trigger significant fines of up to 2% of the annual group turnover for larger businesses. German NGOs and labor unions may enforce claims of potential victims in German courts.

Besides the German plans, the European Commission announced a draft guideline for a duty of care act for companies in 2021. The EU member states collectively support this initiative. The guideline deals with the respect of human rights and environmental standards along the value chain. It is expected that the European Parliament will agree to this initiative in a meeting in March 2021. Moreover, comparable to the German proposal, European parliamentarians recently suggested the implementation of a European digital

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supply chain register to monitor the human rights situation in countries where European based companies are doing business. It remains to be seen if this proposal will meet with approval.

II. Legislative Measures to Counter the COVID-19 Crisis

1. Labor Law

Due to the continued COVID-19 crisis, the German government has continuously passed laws and regulations to mitigate detrimental consequences for the labor and employment market in Germany and also to reduce the risk of infection in the workplace. At the same time, the COVID-19 crisis has also driven legislation with regard to more flexibility and digitalization in work life.

Examples of this are several laws and regulations passed – and recently extended until 31 December 2021 – by the German government to facilitate employers' access to short-time allowances and to increase the amount of short-time allowances provided by the Federal Employment Agency. Although there are a number of options available to employers in Germany who are looking to reduce their personnel costs on a temporary basis due to a temporary shortfall of work during the COVID-19 pandemic, "short-time work" has proven to be the most popular option.

Short-time work under German law is a temporary reduction of weekly working hours (up to zero hours) along with a reduction of the salary and can be implemented for all employees of a company or certain groups. To compensate the employee for the (partial or complete) salary loss, the German Federal Employment Agency pays an allowance of up to 87% of the employee's net salary loss for a period of up to 24 months. In April 2020, around 6 million people and, thus, the highest number of persons so far during the COVID-19 pandemic, were working short-time, which corresponds to about 18% of the total workforce in Germany. In October 2020, the number of people working short-time was estimated at around 1.9 million people, and has increased again since then.

With regard to reducing the risk of infection in the workplace, the German government has recently supplemented the existing regulations by further and more extensive regulations, effective from 27 January 2021 through 15 March 2021. In addition to appropriate technical and organizational measures that the employer must take to reduce operational personal contact, the employer must offer its employees the possibility to work from home, unless there are compelling operational reasons why this is not possible.

2. Temporary Adjustment of the Insolvency Law

In order to address the financial distress caused by the pandemic, a number of legislative measures have been taken in December 2020, inter alia:

— the suspension of the obligation to file for insolvency has been extended (until the end of April 2021) for certain companies which have applied for COVID-19 government support.

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— the Act on the Further Development of the Restructuring and Insolvency Law was passed which provides for certain changes in the German Insolvency Code, e.g. in the case of over-indebtedness, the maximum time available to the management for filing for insolvency has been extended from three weeks to six weeks.

— the Act on the Stabilization and Restructuring Framework for Enterprises which provides enterprises with a wide array of restructuring instruments. Access is possible for companies with their centre of main interest in Germany which have the right to file for the opening of insolvency proceedings but which are not yet legally obliged to do so (because they are neither illiquid nor over-indebted). The instruments available under the new law include stabilization measures such as restrictions on foreclosure and termination of contracts by creditors. The main feature is that debtors may develop a restructuring plan providing for far-ranging possibilities such as transfer of shares, capital measures, debt-to-equity-swaps or the restructuring of security (including security provided by affiliated companies of the debtor) and of liabilities of the debtor. Furthermore, the debtor is largely free as to which of its creditors it wants to subject to the restructuring plan. In particular, the debtor is also free to restructure only the financial liabilities, but to leave its suppliers' claims untouched. There is no formal administration over the debtor's assets and the debtor largely remains in control of the proceedings.

III. Germany's Draft Acts for Driverless Vehicles and Passenger Transport

In the past year, Germany's Ministry of Transport and Digital Infrastructure has brought forward two draft acts aiming to advance driverless vehicles and to modernize passenger transport legislation.

With the new drafts on driverless vehicles, Germany wants to make self-driving cars and related mobility concepts available in ordinary operation by 2022. The law aims at driverless vehicles with highly automated features allowing the vehicle to perform all driving functions in specific conditions. These shall be able to operate in so-called designated areas across Germany. The development of such vehicles is currently hampered, as international type approval rules for highly automated vehicles are lacking. With international rules not expected to enter into force any time soon, Germany wants to move forward and create its own national permit scheme for highly automated vehicles.

In order to be eligible for a permit, which will in general only be valid in Germany, the vehicles must fulfil certain broadly drafted technical requirements. In particular, the vehicles must be able to adhere to traffic rules and be able to operate without a human driver. The geographical area where driverless vehicles may operate is subject to designation by the competent authorities. The Ministry expects that the authorities will designate suitable areas across Germany, i.e. in every municipality. The idea is to integrate self-driving vehicles into ordinary traffic without the need to construct special lanes or roads. When vehicles are in operation, there must be a technical supervision from outside in order to handle uncommon situations or to perform emergency maneuvers.

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The draft law primarily targets operators of mobility as a service ("MaaS") schemes, rather than private car owners. In particular, the Ministry expects that driverless driving will initially be possible in local transport using driverless shuttle busses known as "people movers", thereby opening up new opportunities for providers of MaaS schemes.

The draft law is currently under review due to data protection concerns. It remains to be seen whether and to what extent the draft will be revised.

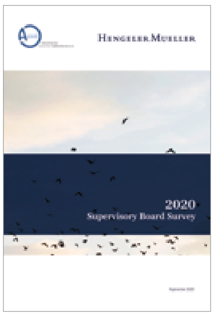
Regardless of the outcome of the draft law on driverless vehicles, the increased use of people movers will be made possible under the amendment to the new Passenger Transportation Act which is expected to be passed by parliament in March 2021. This will be a major step towards creating a legal framework for providers of so-called car-pooling services and reducing the existing market entry barrier for new car-pooling providers. Under the current legal situation, providers of car-pooling services have only a limited possibility of receiving an exemption or temporary permit.

IV. Supervisory Boards Facing the Crisis: Good, but not Good Enough

If a company is facing a crisis, more often than not the supervisory board is held responsible. Could the supervisory board, the highest control body of a company, not have – or should have – known better? The current pandemic puts supervisory boards in a special situation: Due to the disruption of supply chains, the loss of sales, and accompanying financial challenges many companies are operating in crisis mode. Hengeler Mueller, together with the German Working Group Association for Supervisory Board Members, has conducted an empirical study to assess the crisis resilience of supervisory boards, and their ability to act in these circumstances.

The situation is surprisingly relaxed at first: Our study paints a mostly positive picture with regard to the resilience of the supervisory board function in the current environment. Almost 70 percent of supervisory boards think that the organization of their supervisory board is very well adapted to crisis management. However, 15 percent do not agree and see a need for action in their companies.

What measures can supervisory boards take? The respondents consider an increase in the frequency of supervisory board meetings to be reasonable. Another measure would be to revise the reporting system or to establish an ad-hoc committee for crisis management. Overall, smaller and unlisted companies see a much bigger need for action than larger corporations.



To see the full report:
www.hengeler.com/en/svb-survey-2020

Overall, the survey shows that supervisory bodies of listed companies tend to be better prepared for the crisis. This is pretty good news for investors. Stricter governance and a more complex set of rules for listed companies has professionalized the work of the supervisory board. These results are good, but not yet good enough. Even among listed companies, the standardization of quality in the company's highest supervisory body must remain a priority. In addition, non-listed companies must catch up. A more uniform, unbroken standard of professionalism must be established. The current crisis is

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hitting many companies equally hard and often calls business models into question only temporarily. The situation is completely different with specific, individual company crises. These have the potential to place even greater demands on supervisory bodies. Not all companies are sufficiently prepared for this today.

To see the full report: www.hengeler.com/en/service/newsletter/supervisory-board-2020

V. The "Digitalization Amendment" of the German Act against Restraints of Competition

In January 2021, another amendment to the German Act Against Restraints of Competition ("GWB") entered into force. In addition to a series of minor adjustments, the changes relate to two key areas:

First, changes in the area of merger control, in particular,

— a significant increase of the so-called domestic turnover thresholds,

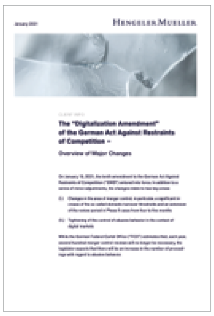
— the introduction of a general de minimis markets clause pursuant to which several de minimis markets can be considered together and lead to a prohibition which would not have been possible by looking at the individual de minimis markets

— and an extension of the review period in Phase II proceedings from four to five months

Second, tightening of the control of abusive behavior in the context of digital markets.

While the German Federal Cartel Office ("FCO") estimates that, each year, several hundred merger control reviews will no longer be necessary, the legislator expects that there will be an increase in the number of proceedings with regard to abusive behavior.

For more details please refer to our newsletter:
www.hengeler.com/en/10-gwb-novelle



Fore more details visit:
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VI. Recent transactions

1&1 Drillisch AG bindingly accepted Telefónica Deutschland's offer for national roaming and advance services. Telefónica had submitted an improved offer following a review by the EU Commission under a merger control remedy. The parties will now implement the terms of the offer in binding contracts. According to Telefónica Deutschland's offer, the agreement is expected to be concluded by mid-May 2021. After having leased mobile frequencies from Telefónica Deutschland in December 2019, 1&1 Drillisch by accepting the national roaming offer has now achieved another key prerequisite for the planned rollout of its own nationwide 5G mobile network in Germany. Hengeler Mueller advised 1&1 Drillisch on the agreements and on the proceedings before the German Federal Network Agency (Bundesnetzagentur) and the EU Commission.

Deutsche Lufthansa AG has successfully issued a bond with a total volume of 1.6 billion euros. The bond was placed in two tranches with a term of four and seven years and

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coupons of 2.875 and 3.75 percent per year respectively. Based on the long-term funds raised now, Lufthansa will repay the KfW loan, which the company had received as part of the government stabilisation measures in 2020, ahead of schedule. Hengeler Mueller advised the involved banks on the transaction.

East Light International Investment Ltd., Hong Kong, has acquired the worldwide trademark and commercial rights of the insolvent fashion company Laurèl from the insolvency administrator of Laurèl GmbH. East Light is part of the Chinese company called Shenzhen Ellassay Fashion Co., Ltd., which holds a portfolio of brands such as IRO Paris, Vivienne Tam, Ed Hardy or Self-Portrait. The company has already been holding the Laurèl trademark rights for China since 2015. Hengeler Mueller advised East Light International Investment on the transaction.

Tencent Holdings Ltd., a leading Chinese technology company, together with other co-investors has invested in Frankfurt-based insurtech startup Clark. As part of the Series C funding round the company raised a total of 69 million euros. Hengeler Mueller advised Tencent on the transaction.

Waterland Private Equity (“Waterland”) announced that it is acquiring Priory Group with the intention to combine Priory with MEDIAN, a portfolio company of Waterland, to create a leading rehabilitation and mental health services provider in Europe. Priory is a leading provider of behavioral healthcare services in the U.K. MEDIAN operates clinics and facilities across Germany providinges a range of rehabilitation, post-acute and acute treatments. Hengeler Mueller advises Waterland on the transaction.

Kublai GmbH, a bidding company which is backed by Morgan Stanley Infrastructure Partners announced a voluntary public takeover offer for **Tele Columbus**, one of Germany’s leading fiber network operators. If the takeover offer is successful, the current anchor shareholder, **United Internet**, will roll over its 29.9 percent stake in Tele Columbus to the bidding company. On conclusion of the takeover offer, there will be two capital increases in which United Internet will participate on a pro rata basis. The total transaction value amounts to approx. 1.7 bn. EUR. Hengeler Mueller advises United Internet on the transaction.

Siltronic AG (“Siltronic”), headquartered in Munich, and GlobalWafers Co. Ltd. (“GlobalWafers”) of Taiwan signed a contractual agreement to create a leading wafer producer. In conjunction with the signing of the business combination agreement, GlobalWafers has announced its intention to make a voluntary public tender offer to Siltronic shareholders. Hengeler Mueller advises Siltronic on the transaction.

Deutsche Börse AG has entered into binding agreements on the acquisition of Institutional Shareholder Services Inc. (“ISS”), a leading governance, ESG data and analytics provider. Deutsche Börse will acquire a majority stake of approximately 80% in ISS. Genstar Capital and the current management of ISS will continue to hold approximately 20% in ISS. The transaction is based on an ISS valuation of USD 2,275 million (EUR 1,941 million) cash and debt free for 100%. It is expected to close in the first half of 2021 with closing being subject to receiving required regulatory approvals and other customary closing conditions. Hengeler Mueller advises Deutsche Börse on the transaction.

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The Managing Board and Supervisory Board of **Siemens AG** have approved the sale of Flender GmbH, a world-leading supplier of mechanical and electrical drive systems, to Carlyle. The contracting parties signed a corresponding agreement. The price is EUR 2.025 billion (enterprise value). The transaction is expected to close in the first half of 2021 and is subject to foreign-investment and antitrust approvals. Hengeler Mueller advised Siemens on both the sale and the originally planned spin-off and public listing of Flender (Dual Track).

Liberty Global plc ("Liberty Global") announced today the intention to submit a voluntary cash tender offer for all publicly held shares of Sunrise Communications Group AG ("Sunrise") at a cash purchase price of CHF 110 per Sunrise share. For this purpose, Liberty Global und Sunrise have entered into a transaction agreement. freenet AG ("freenet") and Liberty Global entered into a tender undertaking pursuant to which freenet agreed to tender its 24.42 percent equity stake (11.05 million shares) into the offer. Hengeler Mueller advised freenet in an integrated team together with Swiss firm Bär & Karrer on the transaction.

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About the firm's India Desk

The India Desk advises Indian companies on their business activities in Germany and throughout Europe and in accompanying German companies to India. Members of the India Desk regularly visit India to meet corporates, law firms, banks and auditors and also to attend conferences based on different topics like IT and foreign investment in India.

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