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 second half of 2024. We have also included a few matters which we have advised on.

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A. PFAS – Never-ending story of "Forever Chemicals"?

Per- and polyfluoroalkyl substances ("PFAS") are crucial for modern societies and economies. Constituting a large and heterogenous group of man-made compounds, PFAS are integral to many industries, including, aerospace, household equipment, medical devices, and electronics, due to their stability and resistance to heat, water, and corrosion; however, some PFAS compounds have been linked to harmful health effects. Traces of PFAS are now found nearly everywhere in the environment, with a recent biomonitoring survey showing that 100% of the participants had PFAS in their bloodstream. The European Union is contemplating a blanket ban for almost the entire substance class.

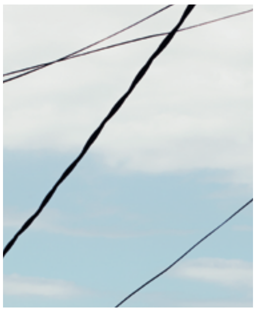
This complex setting poses multiple challenges and requires difficult management decisions – as companies from different sectors, regulators and environment authorities not only have to deal with past emissions that are now considered pollution but must also adapt quickly to current and upcoming regulations.

Litigation and legislation

Settlements in the US

The enormous impact of PFAS in the environment leads to the question of responsibility and regulation. In the U.S., major PFAS producers have settled class action lawsuits for billions of dollars. German chemicals company BASF has agreed to pay over USD 315 million to settle a multi-district U.S. class action on alleged drinking water contamination.

The tide of litigations seems to be coming in across the Atlantic – in April 2024, eleven environmental NGOs jointly announced to sue the Dutch government alleging that it failed to take appropriate measures to protect the people against harmful effects of PFAS.



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ESG obligations and proposed PFAS ban

PFAS are also on the radar of German and EU ESG efforts. Both the German Supply Chain Diligence Act (*Lieferkettensorgfaltspflichtengesetz*) and the recently adopted EU Corporate Sustainability Due Diligence Directive (CSDDD) identify non-compliance with the Stockholm Convention, which prohibits manufacture and use of certain PFAS, as a risk to be assessed and mitigated by larger companies.

The European Chemicals Agency (ECHA) has proposed a blanket ban on nearly 15,000 different compounds without substance-specific risk assessments, which would break with established principles of EU chemicals law. The proposal has sparked debate, with over 5,600 comments received during the public consultation phase. This is because many PFAS applications have no viable alternatives, including high-tech sectors, medical devices, and key technologies for a carbon-neutral economy. A blanket ban on PFAS would likely weaken the EU chemicals industry further and increase Europe's dependence on suppliers from Asia, in contrast to geopolitical ambitions of derisking in key sectors like semiconductors and green energy.

Against this background, the German federal government, initially a driver of prohibitive PFAS regulation, has also advocated for risk-based and more targeted restrictions on PFAS. The outcome of the legislative process at the EU level remains to be seen.

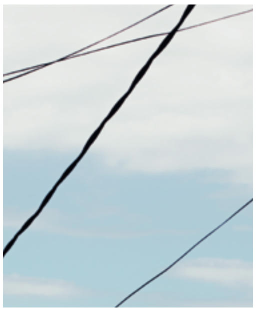
Outlook

While the EU and Member States are debating the right approach, some major manufacturers have already drawn plans to phase-out PFAS-related products completely. While it remains to be seen to what extent such drastic measures shape the regulatory view around PFAS, one thing is for sure – "forever chemicals" are here to stay and their scientific, socio economic and – not least – legal challenges will remain for decades to come.

B. EU Listing Act

On 8th October 2024, the European Council adopted the EU Listing Act ("Act"), a legislative package designed to streamline the process of listing and making EU public capital markets more attractive to EU companies of all sizes, including small and medium-sized enterprises (SMEs). The aim is to simplify the process for companies by alleviating administrative burdens and costs, while preserving a sufficient degree of transparency, investor protection and market integrity. Some of the key reforms adopted include:

- **Changes to IPO process** – The minimum period for an offer to the public to remain open is reduced from previously six to now three working days, to facilitate lower transaction risk in a volatile market environment.
- **Changes to the Prospectus Exemptions for Secondary Issuances:**
  - Prospectus exemption threshold shall be raised from less than 20% to 30%, allowing companies to issue and list shares up to less than 30% of their share capital without needing a prospectus.
  - Issuers with securities listed for at least 18 months on a regulated or SME growth market, will be able to issue additional shares without volume limitation with no need of an approved prospectus, provided that a) new securities to be admitted are not in connection with a takeover, merger or division, b) the issuer is not subject to any insol-



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vency proceedings or restructuring, and c) short document (maximum 11 sides of A4 paper) is filed in an electronic format outlining *inter alia* reason for the issuance, use of proceeds and risk factors specific to the user. For public offers of less than 30% of shares already admitted to trading on a regulated market or an SME growth market, the above exemption will be applicable provided points b) and c) are satisfied.

— **Simplified Follow-on Prospectus** – The Act introduces an EU follow-on prospectus for secondaries and 'uplistings' (from SME growth to regulated market) provided issuer's shares have been admitted to trading on a regulated or SME growth market for at least the 18 months preceding the public offer. This prospectus requires only one year of financial information and excludes the need for an operating and financial review (OFR) in relation to such financial information.

— **Simplified Standardized Prospectus** – The Act includes several amendments to streamline the process and disclosure of information, introducing inter alia a standardized format and sequence, maximum length, the possibility to incorporate information by reference instead of including the information itself.

— **Changes to Market Abuse Regulation (MAR)** – There are also several other amendments to the MAR, most important being that issuers are no longer required to publish inside information related to intermediate steps in a protracted process, only the final event or circumstances need to be disclosed.

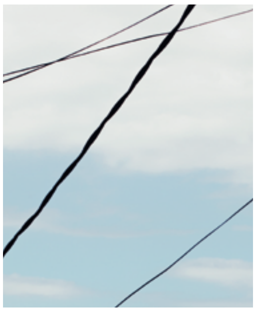
Some provisions took effect upon the Listing Act's entry into force on 4th December 2024, however, most of the amendments become applicable from March, June and December 2026, respectively.

C. From Vision to Reality: A Regulatory Guide to Carbon Capture, Usage and Storage in Europe

Policymakers in Europe are increasingly focused on the development of carbon capture, usage and storage (CCUS) value chains. We are seeing projects and ventures proliferate in some markets such as the UK, Italy and the Netherlands. With significant regulatory change underway in many of the jurisdictions reviewed, projects are being brought forward in the context of a rapidly evolving regulatory framework.

We have produced a guide with our Best Friends firms – Bonelli Erede, Bredin Prat, De Brauw Blackstone Westbroek, Slaughter and May and Uría Menéndez – which covers the status of the European CCUS sector and the regulatory landscape across 7 jurisdictions.

The full guide about the regulatory landscape across Germany and the other jurisdictions is available here.



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D. Supervisory Board Survey 2024

Measures relating to sustainability and the ESG criteria remain remarkably dynamic, and this year once again these two subjects are among the critical factors impacting commercial enterprises. In addition, the progress in digitalisation and the rapid advancements in the field of AI – with the new opportunities as well as challenges they entail – are highly relevant when German companies' supervisory boards are setting their agendas. Likewise, those agendas continue to be shaped by globally persistent and heightened geopolitical instability. One topic that noticeably gained in importance among German corporates is business management and monitoring mechanisms – i.e. assessing the effectiveness of internal control systems (ICS) and risk management systems (RMS).

What has this meant for supervisory boards and the work they do in concrete terms? What further topics are defining supervisory boards' agendas at present? How are these topics influencing supervisory boards' skills and expertise profiles and the criteria for their success? Which challenges and obstacles are supervisory board members currently facing in the activities they perform? Together with AdAR, the Arbeitskreis deutscher Aufsichtsrat e.V. (German Supervisory Board Working Group), we explored these and many more questions in this year's supervisory board survey.

Access the full survey here.

E. Recent matters

Hengeler Mueller advised:

— **Deutsche Bahn** on the sale of its logistics subsidiary DB Schenker to the Danish transport and logistics group DSV for an enterprise value of EUR 14.3 billion.

— **Fraport**, a leading airport operator, on the sale of its stake in Pulkovo Airport, St Petersburg.

— **Hinduja Tech**, a subsidiary of Ashok Leyland on the acquisition of Tecosim Group, a provider of engineering services for product development.

— **KSB**, a leading international manufacturer of pumps and valves, on EUR 550 million refinancing.

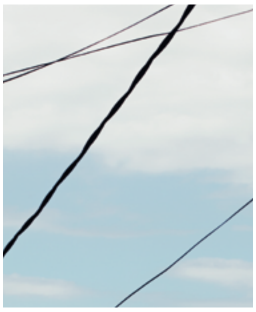
— **Deutsche Bank** on issuance of additional Tier 1 capital instruments with a principal amount of EUR 1.5 billion.

— **Viessman Generations Group** on acquisition of Munich-based asset manager Do Investment, and on significant minority investment as part of consortium in pharmaceutical developer and manufacturer PharO.

— **LANXESS** on the sale of Urethane Systems business, and on the conclusion of a new EUR 800 million ESG-linked syndicated credit facility.

— **Axel Springer SE** on the set up of a new corporate structure.

— **Blackstone** on the acquisition of an 80% stake in pan-European logistics portfolio from Burstone.



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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.

Contact

Daniela Favoccia
Partner
Phone +49 69 17095 382
daniela.favoccia@hengeler.com

Carsten van de Sande
Partner
Phone +49 69 17095 352
carsten.vandesande@hengeler.com

Malte Wundenberg
Counsel
Phone +49 69 17095 713
malte.wundenberg@hengeler.com

Offices

Germany	BERLIN I Behrenstr. 42, 10117 Berlin
	DÜSSELDORF I Benrather Str. 18-20, 40213 Düsseldorf
	FRANKFURT I Bockenheimer Landstr. 24, 60323 Frankfurt am Main
	MUNICH I Leopoldstr. 8-10, 80802 München
Belgium	BRUXELLES I Square de Meeûs 40, 1000 Bruxelles
United Kingdom	LONDON I 30 Cannon Street, London EC4M 6XH

www.hengeler.com