



Dear Readers, Dear Colleagues and Clients,

Two hearts beat inside me right now: the rejuvenation of approaching spring but also the ennui of seemingly identical days with no travel, physical meetings or even a commute most days due to COVID-19. "Déjà vu all over again", to quote Yogi Berra (for those who are not baseball cognizant, Yogi Berra was a famous player, coach and manager – and coined numerous phrases, so-called Yogiisms).

But let's embrace spring (at least in the Northern Hemisphere) with a bevy of highly interesting articles compiled by the lawyers and tax advisors at BEITEN BURKHARDT. You may notice how many times the word "new" shows up in the articles we compiled for you: if you did not notice, I counted 7 times (9 if we count "evolving" and "recent" as well). The European and German legislative bodies and the German courts have not taken a break during the pandemic but are still working at high levels. New FDI regulations will require careful structuring of transactions and sound time management skills to navigate the threat of a month-long suspension of activities. The Transparency Register will undergo significant changes and require the urgent attention of shareholders outside of Germany, too. Foreign directors will also be interested to hear that the German courts have clarified the obligations of managers in times of financial crisis, adding the threat of criminal prosecution to the mix.

Take a few minutes to read what we hope will be of interest to you, your clients and colleagues and join us in looking forward to better times and the return (at least, a bit...) of life as we knew it. All of us at BEITEN BURKHARDT look forward to meeting many of our friends again, the sooner the better.

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1. Virtual Roundtable Discussion on the impact of the evolving FDI regimes in the EU on investment strategies for international investors

BEITEN BURKHARDT organized a virtual roundtable discussion on "the impact of the evolving FDI regimes in the EU on investment strategies for international investors" on 18 March 2021. We were happy that our colleagues from ALTANA and Nctm covered France and Italy.



The focus of the roundtable discussion was on the main governing principles of FDI control in the EU, including the affected sectors and the expected impact on cross border transactions and investments.

For more information please see also [The International Comparative Legal Guide: Foreign Direct Investment Regimes 2021, 2nd Edition](#)

2. Press Releases of the Corporate/M&A practice group since October 2020

17.03.2021	BEITEN BURKHARDT advises VITAL Materials Co. Ltd. on the acquisition of the industrial site Langelshelm from PPM	Press Release
11.03.2021	BEITEN BURKHARDT advises the shareholders of a leading specialty insurance broker on the sale to Warweg	Press Release
24.02.2021	BEITEN BURKHARDT advises BANDAI NAMCO Entertainment Europe on the acquisition of a shareholding in Limbic Entertainment GmbH	Press Release
08.02.2021	BEITEN BURKHARDT advises SWT on the acquisition and financing of the AWG specialist store ensemble near Esslingen	Press Release
05.02.2021	BEITEN BURKHARDT advises DeinHandy on acquisition of Mobilezone	Press Release
01.02.2021	BEITEN BURKHARDT advises Köpper Group on the sale of three car dealerships to Tiemeyer Group	Press Release
18.01.2021	BEITEN BURKHARDT advises LaSalle Investment Management on Sale of Office property in Ratingen	Press Release
22.12.2020	BEITEN BURKHARDT advises Hellenstein SolarWind on acquisition of a wind farm	Press Release
04.12.2020	BEITEN BURKHARDT advises Commerz Real AG on acquisition of Heinsberg wind farm	Press Release
02.12.2020	BEITEN BURKHARDT advises Commerz Real AG on acquisition of Beckum wind farm	Press Release

3. New Tax Team in Hamburg

BEITEN BURKHARDT strengthens international tax law and its tax expertise in M&A transactions by the joining of **Dr Marion Frotscher** as new Equity Partner and a team of three experienced professionals to BEITEN BURKHARDT's Hamburg office.

4. The New German Merger Control Law in a Nutshell

Author: Christoph Heinrich

In January, the German parliament passed a major amendment to the German Act Against Restraints of Competition. The amendment includes far-reaching changes to the German merger control regime. It will significantly cut red tape for many M&A deals.

[read more](#)

5. EU First – Venture Capital Funds, Start-ups and the German Foreign Investment Control

Authors: Dr Patrick Alois Hübner | Dr Christian von Wistinghausen

The draft bill of the German Federal Ministry for Economic Affairs and Energy (*BMWi*) dated 22 January 2021 for the 17th Amendment of the German Foreign Trade and Payments Ordinance underlines that the German Federal Government wants foreign investments in German companies active in promising, future-oriented industries in particular to become subject to foreign investment control. This planned tightening of the German foreign investment control is of particular interest for venture capital funds and start-ups.

[read more](#)

6. The duty to notify losses under German Company Law – a case of liability for managing directors!

Author: Petra Bolle

Legislators extended the suspension of the obligation to file for insolvency, such as for limited liability companies (*GmbHs*) that have filed a claim for financial aid due to the impact of the corona pandemic. This obligation was suspended until 31 January 2021 but has now been extended retroactively from 1 February until 30 April 2021. However, managing directors of companies must still comply with their duty to notify losses under German Company Law. Contrary to the obligation to file for insolvency, the duty to notify losses under company law has not been suspended due to the COVID-19 pandemic. A managing director who fails to comply with this duty may not only be found liable for the resulting damages but may even be criminally liable.

[read more](#)

7. Transparency Register: New draft bill introduces significant change and new obligations

Authors: Volker Szpak | Petra Bolle

On 10 February 2021, the German Federal Government published a draft bill for a Transparency Register and Financial Information Act (*Transparenzregister- und Finanzinformationsgesetz, TraFinG, draft bill*). The draft bill has been in the legislative procedure since 12 February 2021. The Act is designed to make some crucial changes to the obligations with respect to the Transparency Register, which are part of the German Money Laundering Act (*Geldwäschegesetz, GwG*). Currently, the plan is for the TraFinG to enter into force on 1 August 2021.

[read more](#)

8. Transparency or pillory? FAQs about the new Competition Register

Author: Dr Maximilian Degenhart

In 2021, the new Competition Register will start in Germany. Following the establishment of the Transparency Register, this means yet another public register for companies to deal with. If you are a manager of a company that bids for public contracts, take note as you read on.

[read more](#)

9. Whistleblower Protection Act: New Whistleblowing Duties Affect Medium-Sized Companies

Author: Dr Maximilian Degenhart

The new Whistleblower Protection Act stipulates new duties for all companies with more than 50 employees, including freelancers. From December 2021 at the latest, affected companies are to set up their own whistleblowing system for employees, customers, suppliers and other third parties so that they may anonymously report (alleged) irregularities in the company.

[read more](#)

10. Brexit: Impact on the transfer of personal data to the United Kingdom

Author: Katharina Mayerbacher

The United Kingdom – that is Great Britain and Northern Ireland – is no longer part of the European internal market or the customs union. This impacts all companies that have a business relationship with companies from Great Britain and Northern Ireland. Data protection is not exempt in this respect. Under data protection law, when the United Kingdom left the European Union, it became a so-called third country. The transfer of personal data to a third country is subject to special requirements in accordance with Chapter 5 of the General Data Protection Regulation (GDPR). On 19 February 2021, the European Commission presented drafts for two “Adequacy Decisions” pursuant to Article 45 para. 3 GDPR.

[read more](#)

11. Recent EU regulation on crowdfunding

Authors: Dr Christof Schmitt, Joel Felix Schaaf

To date, crowdfunding has not been regulated uniformly in the EU. The crowdfunding regulation now brings an uniform EU regulatory framework, including a European passport.

[read more](#)

12. Will there soon be a new limited liability company for start-ups? Next round of discussions start on the limited liability company in steward ownership

Author: Tassilo Klesen

Many founders of start-ups wish to ensure during the establishment phase or at an early stage that the company will be directed in “steward ownership”. This means that the capital of the company and the profits will be permanently linked and the responsibility at company level will be given to those shareholders, who are actively involved in the company. While anchoring steward ownership during the early stages is comparatively uncomplicated in some countries (e.g. in the Netherlands a trust can be used with little regulation), the law in Germany currently makes it difficult to implement such ideas. After a working group of professors presented a first draft of a bill to amend the German Limited Liability Company Act in June 2020 – a draft that has been discussed controversially – the working group has since presented a new draft bill that takes recent discussions into account. One of the proposed amendments is that, instead of speaking of a limited liability company in steward ownership (*GmbH in Verantwortungseigentum*, VE-GmbH), the bill now proposes a **Limited Liability Company with Locked Capital** (*GmbH mit gebundenem Vermögen*, GmbH gebV).

[read more](#)

13. New Development Regarding Taxation of IP Registered in Germany

Authors: Dr Marion Frotscher | Simon Bauer

After the Federal Ministry of Finance (FMoF) issued a letter of guidance on the taxation of IP merely registered in Germany on 6 November 2020, concerns grew on the correct treatment of such matters. Subsequently, two legislative drafts touching this issue were passed, the first draft aiming at eliminating the relevant phrase in the law regarding IP registered in Germany and the second draft refraining from doing so, thus leaving the section unchanged. Finally, the Federal Ministry of Finance issued an additional letter of guidance on 11 February 2021, giving some clarity on the handling of this matter in the future.

[read more](#)

14. "First Employer to Kick Out Vaccination Refusers"

Author: Dr Erik Schmid

In Germany, a discussion has developed on whether the corona vaccination is mandatory for employees, especially for those in the nursing and medical sector, and whether sanctions under labour law such as warnings or dismissals are permissible in the case of refusal to vaccinate.

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