



# INTERNATIONAL BRIEFING

Dear reader,

Welcome to our autumn 2020 edition of our International Briefing.

While most of us are still grounded in our home countries or even home offices, legislation and best practice continue to develop at their usual pace and we keep tracking the most important developments for your daily business:

As the UK becomes a third country on 1st January 2021, you and your business will have to calculate with increased costs, barriers to trade and travel. We therefore would like to remind you of the Brexit related questions around commercial and corporate law.

We inform on legislative plans to introduce a limited liability company in steward ownership in Germany and provide an update on cross-border company conversion of a German GmbH and relocation of the registered office to another EU member state.

Moreover, you will find an overview of the planned legislative reform on German Competition Rules for big players in the digital economy and the CJEU decision of July 2020 on international data transfers, as well as information regarding business shutdown insurances, voluntary redundancy programs and on ESG matters in the European context.

In short: A lot of reading for dark autumn evenings, but less traveling means more time for reading, right?

Enjoy!

Best regards,



**Dr Christian von Wistinghausen**  
Co-head of the Corporate / M&A practice group

## A limited liability company in steward ownership?

Over the past few years, it has become increasingly popular in Germany for companies to choose steward ownership, even during the start-up phase, and to anchor this structure in young companies. The UN 2030 Agenda for Sustainable Development has played a role in this, as has the establishment of the *Stiftung Verantwortungseigentum* (Steward Ownership Foundation) in 2019 (to which the BMW Foundation, Alnatura and Ecosia all belong). The significant environmental and social challenges facing our society also raise the (rhetorical) question of whether companies should play a more important role in the solution to these challenges.

While the legal situation in some countries means it is less complicated to anchor steward ownership in the company structure in the early stages of establishment (in the Netherlands, for example, barely regulated foundations or trusts may be used), the current law in Germany makes it more difficult to implement this idea. For this reason, an academic working group has prepared a draft law as a proposed amendment to the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG*).

[Read more](#)

## Cross-border company conversion of a German GmbH and relocation of the registered office to another EU member state – Pre-effects of the Company Law Package?

It is now undisputedly permitted to transfer the registered office of a German GmbH to another EU member state while simultaneously changing into a legal form under the law of the country

of relocation (known in German as "*Herausformwechsel*") ("Company Conversion").

In practice, the possibility of Company Conversion is used more and more often. Unlike other forms of transformation (e.g. cross-border mergers), the Company Conversion has the advantage that it preserves identity and does not involve a transfer of assets. Consequently, as a rule, no real estate transfer tax becomes payable, no hidden reserves must be disclosed, there is no violation of holding periods, and public law approvals remain valid for the company.

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## Brexit – just three months to prepare your business left

The odds are now stacked against the EU27 and the UK agreeing a comprehensive framework for trade in goods and services among others. As the UK becomes a third country on 1st January 2021, you and your business will have to calculate with increased costs, barriers to trade and travel. Only three months are left for you to prepare for the changes and the challenges of doing business in and with the UK post-withdrawal. These changes pose significant risks and costs.

The changes to doing business resulting from the UK's withdrawal from the EU are wide-ranging, indeed covering every aspect of business and life. Their impact on business depends on the activities concerned, be it sale of goods, cross-border manufacturing operations, providing services or maintaining a commercial or manufacturing presence in the UK or the EU27. Even if some small agreement can be reached between the parties, it is certain that Brexit will generate additional costs and risks for all economic operators, both in the UK and in the EU27.

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## New developments regarding business shutdown insurances

By now, most of those affected will know how their insurer handles shutdown insurance claims in the coronavirus crisis. Some insurers are settling the claims, while others refuse to accept a liability. In many other cases insurers offer a compromise based on the so-called "*Bavarian solution*" (see our [Blog post of 8 April 2020](#)).

If the policyholder and the insurance company agree on a compromise, a settlement agreement is reached and legal disputes about the insurance cover are avoided. From an insurance com-

pany's view, the initiative to offer a compromise makes sense because it takes the wind out of the sails of law firms pursuing class actions. Any settlement based on the Bavarian model will prevent a possible lawsuit by the policyholder. The expected wave of lawsuits is likely to be smaller with this policy. Nevertheless, a large number of lawsuits is to be expected because the settlement offers of insurers usually cover only a fraction of the loss.

[Read more](#)

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## Updating the German competition rules for big players in the digital economy

The German Act against Restraints of Competition (*GWB*) Digitalisation Act is coming – slowly. The draft bill under the heading of Competition Law 4.0 was already published at the end of January. Now the Federal Government has forwarded it to the German Parliament and Council (*Bundestag und Bundesrat*) on 9 September 2020. It is to be expected that law proceedings will be finalized before the deadline for the transposition of Directive 2019/1/EU (so-called European Competition Network, „ECN+ Directive“) expires on 4 February 2021. The future 10th Amendment to the *GWB* is intended to create a regulatory framework for the digital economy and at the same time transpose the ECN+ Directive to strengthen the competition authorities of the EU Member States into national law.

A full analysis of the 10th Amendment to the German Act Against Restraints of Competition would exceed the scope of this contribution which is thus limited to the changes in digital economy.

[Read more](#)

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## CJEU on international data transfers: EU-US privacy shield no more, SCCS in doubt

With its decision of the 16th July 2020 in case C-311/18 ("Schrems II decision"), the Court of Justice of the European Union (CJEU) has invalidated the EU-US Privacy Shield mechanism widely used for transferring personal data from the EU to the USA.

More importantly, the Court cast aspersions on the use of Standard Contractual Clauses ("SCCs") as a mechanism for international data transfers, though it did not declare these to be invalid per se.

This decision will have an enormous impact on both transatlantic and global data transfers. Data exporters within the EU will need to take urgent action to ensure compliance.

[Read more](#)

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## Voluntary redundancy programs as an alternative to one-sided staff cuts

For various reasons, in particular the effects of the Covid-19 pandemic, companies may be forced to make short-term decisions on staff reductions. Staff can be reduced traditionally by the employer by termination for operational reasons, or through termination agreements signed by common consent on the basis of so called voluntary programs. After thoroughly analysing the existing situation (among other things, existing job security, company image, the decision-makers on the works council and at the trade union, economic situation), the company should decide which way to go on a case-by-case basis. This article shows that voluntary programs can be a genuine alternative to one-sided staff reductions, and how this can work.

[Read more](#)

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## Update on ESG: Sustainability remains a political focus, the "Study on directors' duties and sustainable corporate governance" and the EU Commission consultation on the revision of the CSR Directive

Enterprises should prepare for increased also regulatory measures to promote a sustainable economy and the announced transition to a "Green Economy". At present, this is also particularly true with regard to the German law on due diligence in the supply chain which has now been explicitly announced.

[Read more](#)

The "Study on directors' duties and sustainable corporate governance" ("Study") prepared by EY addresses centrally the phenomenon of "short termism", the short-term thinking in corporate governance (Study on directors' duties and sustainable corporate

governance – Publications Office of the EU). The focus of corporate decision-makers on short-term shareholder value maximisation instead of long-term corporate interests reduces the long-term economic, environmental and social sustainability of European companies, according to the underlying thesis of the Study. The Study uses data material from recent decades to substantiate the phenomenon of short termism, and then presents essentially seven main causes ("Drivers") of short termism as well as three possible responses by the European Commission ("Commission") as remedies.

[Read more](#)

In September the EU Commission published a summary of the results of the consultation on the revision of the so-called CSR Directive 2014/95/EU (Non-Financial Reporting Directive, "NFRD").

[Read more](#)

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## Press Releases of the Corporate / M&A practice group since May 2020

[BEITEN BURKHARDT Advises Ledvance on the Sale of Its Subsidiary Radium Lampenwerk](#) (Press Release 12.10.2020)

[BEITEN BURKHARDT Advises Suzhou TZTEK Technology Co Ltd on the Acquisition of MueTec Automatisierte Mikroskopie und Meßtechnik GmbH](#) (Press Release 12.10.2020)

[BEITEN BURKHARDT Advises Insolvency Administrator of TOM TAILOR Holding SE on Sale of all Shares in TOM TAILOR GmbH](#) (Press Release 22.09.2020)

[BEITEN BURKHARDT Advises Ledvance on the Sale of its Eichstätt Plant](#) (Press Release 27.08.2020)

[BEITEN BURKHARDT Assists Holding Company Dr. Zwiebelhofer GmbH in the Purchase and Reintegration of two Croatian Companies into the König Metall Group](#) (Press Release 21.08.2020)

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[Hunton Andrews Kurth and BEITEN BURKHARDT advise EGCO Group on the acquisition of a wind park project](#) (Press Release 11.05.2020)

[BEITEN BURKHARDT Advises Amphenol Corporation on Bond Issue of EUR 500 m.](#) (Press Release 06.05.2020)

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## About the Corporate / M&A practice group

### CORPORATE

BEITEN BURKHARDT provides comprehensive corporate law advice on all aspects and issues arising in relation to the establishment and structuring of companies, current company management, reforms in connection with reorganisation or generational changes, or in connection with the sale or acquisition of business units or their liquidation and dissolution. We advise medium-sized companies and multinational groups, family-owned companies and their shareholders, listed and unlisted stock corporations, publicly-owned companies and foundations, start-ups and venture capital firms, as well as strategic and financial investors from Germany and abroad. Excellent technical knowledge and many years of experience in corporate law and across various sectors allow us to provide our clients with individual and practical solutions for complex, specialised topics and legal issues arising in day-to-day business.

### M&A

Mergers & Acquisitions has been a core area of expertise for BEITEN BURKHARDT since the establishment of the firm. We advise medium-sized companies and multinational groups, family-owned companies and their shareholders, listed and unlisted stock corporations, publicly-owned companies and foundations, start-ups and venture capital firms as well as strategic and financial investors from Germany and abroad on national, international and cross-border transactions, auctions and exclusive negotiations, carve-outs, takeovers and mergers. Our know-how and practical transaction expertise allows us to optimally assist our clients during all phases of M&A transactions. We advise on preparations and the conceptual design of a transaction, lead and manage legal, tax and economic due diligence assessments of the target(s), assist with and steer contractual negotiations, provide support during signing and closing of the transaction documents, and assist with post-closing and post-merger activities.

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