



NEWSLETTER



PROPOSED BY **DS GRANER LAWYERS AVOCATS**

In our newsletter we would like to inform you regularly about news and general information in the field of law and business in Europe and Germany in particular. We hope you find this useful and wish an enjoyable read!

NEWS RELATED TO THE CORONAVIRUS PANDEMIC (COVID-19) – 2020-12-10

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Recent developments and measures

Currently, very different measures are in place in Germany, depending on the number of infections. In so-called hotspot areas, there are night-time curfews and strict contact rules (households may only meet with one other person). Outside so-called hotspot areas, uniform rules apply throughout Germany. According to these, restaurants, bars, hotels and all recreational facilities are closed and contact restrictions are in place. However, due to the continued high infection rate, it is expected that further restrictions will be adopted in the near future.

(1) EU measures

The European Commission has signed contracts with vaccine manufacturers to combat the pandemic. Among other things, the EU secured **405 million of the Corona vaccines** from the company Curvec and **200 million doses** from the vaccine manufacturer Johnson & Johnson. The European Medicines Agency (EMA) expects the first Corona vaccine to be licensed in the EU by the end of the year

Remdesivir is **currently** the only drug approved in the EU for the treatment of Covid 19 patients with oxygen requirements.

The EU Commission secured **500.000,00** treatment unit by contract with the manufacturer Gilead.

European Union member states are expected to approve the EU's **€1.8 trillion budget** for the coming years soon. More than half of the money is to go into a sustainable and stable economic recovery for the period after the Corona-crisis.

Under "SURE", a temporary EU instrument to **mitigate unemployment risks** in times of Corona, the Council approves financial assistance of **EUR 87.4 billion** for 16 member states in the form of EU loans.

(2) Governmental measures in Germany

In Germany, the measures for companies that had already been put into place by the end of March have been extended.

The German government is providing aid of up to **EUR 30 billion** for the sectors affected by the current closures. Those affected can receive aid of **up to 75%** of their prior-year sales.

If companies are unable to make the tax payments due this year due to the economic consequences of the Corona pandemic, these

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payments should be deferred on request for a limited period and in principle without interest. Companies can submit the request to their tax office **until 31 December 2020**.

In order to cushion the impact of the Corona pandemic on employees and employers, the German Cabinet has decided to extend short-time working benefits **until the end of 2021**.

FURTHER NEWS RELATED TO TRADE AND LAW

● **Stricter foreign trade law for foreign investors**

In order to better protect German and European companies from sensitive economic sectors against takeovers by foreign investors in the future, the new AWG Act provides for stricter rules. According to these rules, the German Federal Government can prohibit the purchase of a company not only in the event of a conflict with national interests, but also if the public security of **another member state or the EU** is endangered. Furthermore, the law provides for the circle of protected goods to be extended. In particular against the background of the Covid 19 pandemic, **medical devices are now specially protected**. In the event of violations, there is the threat of substantial sanctions.

● **New European Dual-Use Regulation is coming!**

On European level new regulations for the control of export and transit of **surveillance technologies** are coming into force. An export of surveillance technology will be subject to authorization if the exporter becomes aware that the product in question is or could be used in connection with the commission of **serious human rights violations**.

● **European Commission wants to improve protection of intellectual property**

The European Commission has published a new action plan for intellectual property.

With this action plan, it wants to help **small and medium-sized** enterprises in particular to make the best possible use of their inventions.

Among other things, the action plan provides for:

- a **uniform patent system** within the EU
- a **EUR 20 million** grant program for the protection of intellectual property
- better cooperation between law enforcement agencies and intellectual property owners.

● **New ICC Force Majeure and Hardship Clauses 2020**

In pandemic times, sovereign restrictions can lead to severe failures in the supply chains. It is therefore all the more important that the contracting parties establish **clear rules on force majeure**. The concept of force majeure is familiar to most legal systems. However, there are considerable international differences in the way it is formulated by legislators and courts.

The **updated ICC clauses** are ideally suited to eliminate these **legal uncertainties** in international contracts. The most important changes include a short formula for force majeure, extended options in hardship clauses for termination and adjustment of contracts.

Please note, however, that if contracts were concluded at this stage, Covid-19 itself would

very likely no longer be considered an unforeseeable event, as the global impact on supply chains is now sufficiently known. We therefore recommend **careful contract drafting**.

Recent European Anti-Dumping Measures

(1) The European Commission imposed definitive anti-dumping duties on imports of certain flat-rolled **products of steel** in sheets or rolls originating in the PRC. Anti-dumping duties of **up to 19 %** are possible (see Regulation (EU) 2020/1408).

(2) With effect from July 22, 2020, the European Commission is extending the anti-dumping duties on imports of **solar glass** originating in the PRC. Anti-dumping duties of between **17, 5 % and 75.4 %** are possible (see Regulation (EU) 2020/1080).

New reorganization law to come in early 2021!

The suspension of the obligation to file for insolvency for Corona-related over-indebted companies **ends at the end of this year**.

In order to prevent a wave of bankruptcies, the new draft law provides for reorganization **outside the insolvency of companies** that are threatened with insolvency but have not yet become insolvent. According to the bill, a majority of 75% of the creditors can decide to restructure the company.

Recent major insolvency proceedings

Despite the massive economic downturn, insolvencies in Germany continued to fall significantly. As reported by the business information service Creditreform, the number of corporate insolvencies decreased significantly by 13.4 percent to 16,300 forecasted cases in 2020 (2019: 18,830).

Though, this effect is caused by the German government's numerous aid and support measures and the suspension of the obligation to file for insolvency within three weeks after the commencement of insolvency or over-indebtedness (art. 15a of the German Insolvency Code) **until December 31st 2020**.

There were noticeably fewer insolvency notifications for small businesses in particular as a result of the suspension. In contrast, there was a significant increase in insolvencies among larger companies.

These companies with a turnover of **more than 50M €** filed for insolvency:

- Aluminium Rheinfelden GmbH
- DRALON GmbH
- Escada GmbH
- FEXCOM GmbH
- Hans-Lingl GmbH & Co. KG
- Heinrich Huhn GmbH + Co. KG
- Klier Hair Group GmbH
- Landmann GmbH & Co. KG
- Peter Kaiser Schuhfabrik GmbH
- Sachsenring Bike Manufaktur GmbH
- Tidal Operations Germany GmbH
- Wurzel Medien GmbH

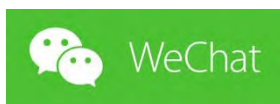
It can be assumed that the number of insolvencies will increase significantly in the coming year due to the extended lockdown and the partial expiry of aid programs.

We therefore recommend that you select your contractual partners carefully and conduct if necessary an economic background research and, in particular, that you draft your contracts very prudently.

Risks related to insolvencies can be mitigated, for example, by using **detailed retention of title clauses** (RoT). We will be happy to advise you on the drafting of your supply contracts.



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For more information:

DS Graner Lawyers Avocats

Griegstraße 27 B 70195 Stuttgart / Germany
Tel.: +49 711 16260 - 0 Fax: - 18
www.ds-graner.com info@ds-graner.com

Paris Beijing Shanghai Guangzhou Stuttgart Toronto Montreal Vancouver Ottawa Québec Ho Chi Minh City Hanoi Singapore Barcelona Madrid Milan Brussels Buenos Aires Santiago Lima Bordeaux Lille Lyon La Réunion Dakar

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