



### **Estimado lector, estimados compañeros, estimados clientes,**

Dos corazones laten en mí en este momento: el rejuvenecimiento de la primavera que se acerca, pero también el hastío de días aparentemente idénticos de CoViD inducidos por la falta de viajes, reuniones físicas e incluso la falta de desplazamientos al lugar de trabajo durante muchos días. "Déjà vu all over again", por citar a Yogi Berra (para aquellos que no sepan de béisbol, Yogi Berra fue un famoso jugador, entrenador y manager y acuñó numerosas frases, llamadas Yogiismos).

Pero demos la bienvenida a la primavera (al menos en el hemisferio norte), y con ello a la serie de artículos de gran interés recopilados por los abogados y asesores fiscales de BEITEN BURKHARDT. Se darán cuenta del número de veces que aparece la palabra "Nuevo" en los artículos que hemos recopilado para ustedes: y si no se han dado cuenta, la he contado hasta 7 veces (y contando también los términos "evolución", y "reciente" hasta 9 veces). Los órganos legislativos europeos y alemanes, así como los tribunales alemanes, no se tomaron un respiro durante la CoVid, sino que mantuvieron su alto nivel de actividad. La nueva normativa sobre inversiones extranjeras directas exigirá una cuidadosa estructuración de las transacciones y requerirá habilidades de gestión del tiempo para sortear la amenaza de un mes de suspensión de actividades. El Registro de Transparencia sufrirá cambios significativos y requerirá la atención urgente también de los accionistas extranjeros. A los directores extranjeros les interesará saber también que los tribunales alemanes han aclarado las obligaciones del gerente en tiempos de crisis financiera, añadiendo la amenaza de un proceso penal al conjunto.

Tómese unos minutos para leer lo que esperamos sea de su interés, de sus clientes y de sus compañeros, y únase a nosotros para esperar tiempos mejores y el regreso a la vida (al menos, un poco...) como la conocíamos. Todos en BEITEN BURKHARDT esperamos volver a encontrarnos con muchos de nuestros amigos, y cuanto antes mejor.

**Dr Philipp Sahm, LL.M.**

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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

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

### 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.

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### 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](#)

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### 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](#)

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### 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.

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## 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](#)

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## 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](#)

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## **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](#)

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## **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](#)

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## **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](#)

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## 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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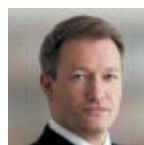
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