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LaborLawMagazine

The online magazine for labor law in companies

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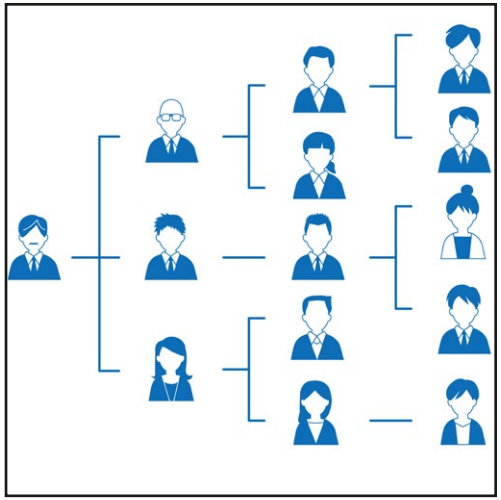

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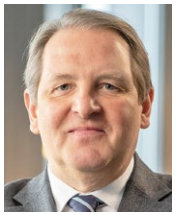

Prof Dr
Thomas Wegerich
Editor
LaborLawMagazine

Dear Readers,

As a reaction to the Russian war against Ukraine the European Union has quickly set up a legal framework to enact severe and far-reaching sanctions against the aggressor. These sanctions may have an impact on employment contracts in Germany. Björn Vollmuth and Vanessa Klesy have sorted out the details for you.

You think ESG (Environmental, Social, Governance) has nothing to do with Human Resources? – Michael Magotsch and Oliver Otto will prove you wrong. They claim: „Sustainability has long been part of the German labor law." You should not miss out on this article which describes and explains the topic at a very high and practice orientated level.

The German Supply Chain Act is just around the corner and will render into force in January 2023. Which means there is relatively little time left for German companies and their adivsors to prepare for the requirements of the new law. Dr. Kathrin Bürger knows what has to be done (and to be obeyed). Happy reading.

Sincerely yours,

Thomas Wegerich

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Keep an eye on the developments

Impact of the EU sanctions against Russia on employers in Germany

By Björn Vollmuth und Vanessa Klesy

Early in 2022, the European Union enacted several Regulations in quick succession to impose far-reaching sanctions on Russia as a reaction to the conflict with Ukraine. These sanctions can also have an impact on employment relationships in Germany which involve any activities that are prohibited. This article gives an overview of the sanctions, the consequences of a violation, and the options for action for employers in Germany if they are affected by the EU Regulations.

Overview of the EU sanctions against Russia

The sanctions concern, among other things,

- the financial sector by prohibiting any form of lending to and buying of securities issued by certain Russian banks and government, and by imposing a full prohibition on any transactions with certain Russian state-owned enterprises across different sectors.

- the energy sector by banning exports of specific refining technologies and new investments.

- the transport sector by banning exports, sales, supply, or transfer of all aircraft, aircraft parts and equipment to Russia, including the provision of all related repair, maintenance, or financial services, and by imposing restrictions on the export of maritime navigation goods and radio communication technology.

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Prison sentences from three months up to five years shall be imposed for the (attempted) violation of export prohibitions, the sale, supply, or transfer of goods, the provision of services or the making of investments where this is prohibited, and for violation of asset freeze measures.

- dual-use goods (i.e., sensitive goods, services, software, and technology that can be used for both civil and military purposes) and advanced technology items by tightening existing export controls on dual-use goods to target sensitive sectors in Russia's military industrial complex and limiting Russia's access to crucial advanced technology.

- trade restrictive measures, namely import and export bans, on items such as steel products, coal, cements, rubber products, wood, liquor, and luxury goods. The

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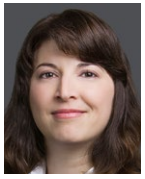

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luxury goods ban target products worth over EUR 300 and includes, among other things, clothing, shoes, leather, jewelry, watches, precious metals, precious stones, suitcases, and handbags, as well as vehicles worth over EUR 50,000.

Who is subject to the sanctions?

The sanctions apply not only within the territory of the EU, but also (a) on board any aircraft or any vessel under the jurisdiction of a member state, (b) to any person inside or outside the territory of the EU who is a national of a member state, (c) to any legal person, entity, or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a member state, and (d) to any legal person, entity, or body in respect of any business done in whole or in part within the EU.

> "Companies cannot be held criminally liable under the German Criminal Code (Strafgesetzbuch), which only applies to individuals."

Hence, employers established in Germany and employees who are nationals of an EU member state, even if they are working in a third country outside the EU (e.g., in Russia), must abide by the EU sanctions. The sanctions also provide for broad anti-circumvention provisions, according to which it is prohibited to participate knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the sanctions. As a result, there is no loophole for deploying non-EU nationals in a third country to do business that violates the sanctions: If that is done with the knowledge that the employees would primarily or to a significant extent participate in sanctioned activities, or if the employer in Germany is able to instruct the individuals, or approves (even implicitly) sanctioned transactions, the employer will be hit just as hard for violating the sanctions.

What are the consequences of a violation of the sanctions?

Violations of the sanctions constitute criminal or administrative offenses pursuant to Sections 18 and 19 of the Foreign Trade and Payments Act (Außenwirtschaftsgesetz) and Section 82 of the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung). In general, prison sentences from three months up to five years shall be imposed for the (attempted) violation of export prohibitions, the sale, supply, or transfer of goods, the provision of services or the making of investments where this is prohibited, and for violation of asset freeze measures. Where the aforementioned violations are committed negligently, i.e. without intent, this constitutes an administrative offense. Such an administrative offense is punishable with a fine of up to EUR 500 000.

In this connection, it is worth noting that Section 22 para. 4 of the Foreign Trade and Payments Act provides for the possibility of voluntary self-disclosure in case of negligent violations. If the violation is uncovered by in-house controls or audits and voluntarily reported to the competent authority, and if appropriate measures are taken to prevent a violation due to the same reason, the administrative offense will not be prosecuted. A notification to the competent authority is considered voluntary if the authority has not yet started investigations into the violation.

Companies cannot be held criminally liable under the German Criminal Code (Strafgesetzbuch), which only applies to individuals. However, companies can be liable under Section 30 of the Act on Regulatory Offenses (Ordnungswidrigkeitengesetz) in a situation where a company representative commits a criminal or administrative offense, which leads to the violation of the company's incumbent duties. The applicable administrative fines may amount to EUR 10 million in case the offense was committed with intent and EUR 5 million where the offense was committed negligently.

Options for action under German employment law

In light of the far-reaching sanctions and the serious consequences of a violation, employers should carefully check whether their employees are engaged in any prohibited activities within the scope of their employment. If necessary, the employees' tasks must be adjusted. In some cases, this may be possible simply by giving directions (Weisung) in accordance with the job description in the employment agreement. In other cases, especially where a significant part of the job activities is prohibited under the

sanctions, a reassignment (Versetzung) or amendment of the employment agreement (Vertragsänderung) may be required. In this case, the employer must also abide by certain participation rights of the works council if one has been established in the business in question.

As the sanctions do not only apply within the territory of the EU, but also to any EU national inside or outside EU territory and to any legal entity inside or outside the territory of the EU that is incorporated or constituted under the law of an EU member state, employers established in Germany must not only monitor their employees' activities within Germany or the EU, but also if they are working in a third country outside the EU, including Russia. Hence, employers must check which employees they have posted to another country (Entsendung) and whether their activities there are compatible with the sanctions. If the activities of employees posted to other countries are not compatible with the sanctions and it is not possible to adjust their tasks by giving directions or assigning other tasks while maintaining the posting, employers have to terminate the posting, recall the employees, and assign them to another job that does not violate the sanctions. In case the employee is not willing to return to Germany, the employer should terminate the employment contract to avoid (further) violations of the sanctions.

Under German law, employers are furthermore subject to certain fiduciary duties (Fürsorgepflicht des Arbeitgebers) towards their employees and must ensure that any risks to the safety, health, and other legal interests of their employees are avoided. In case employees are engaged in any prohibited activities in the course of their employment, employers are obliged to inform their employees about the pending legal risks and assign them to other activities not violating the sanctions. This also applies with regard to employees posted to other countries.

> "Just like the conflict itself, the political and legal situation are highly dynamic."

If employers in Germany experience a significant loss of work due to the sanctions, it may be possible to apply for short-time work (Kurzarbeit) and corresponding short-time work allowance (Kurzarbeitergeld) with the employment agency (Arbeitsagentur) if the statutory requirements are met. The Federal Employment Agency (Bundesagentur für Arbeit) explicitly states on its website that employers affected by sanctions against Russia may generally receive short-time work allowance if they suffer a significant loss of work. Sanctions or a trade embargo against Russia are considered an unavoidable event if the employer's business is directly affected by them. In their application for short-time work allowance, employers must explain what the effects of the sanctions on their business are and to what extent this causes the significant loss of work, e.g. which activities can no longer be carried out as they would constitute a violation of the sanctions. To receive short-time work allowance, the other legal requirements have to be met as well: in particular, at least 10 percent of the workforce must experience a loss of pay of more than 10 percent in the respective calendar month (this minimum requirement is temporary until 30 June 2022; thereafter one-third of the workforce must have a loss of pay of more than 10 percent).

Future developments

Just like the conflict itself, the political and legal situation are highly dynamic. Employers are well advised to keep an eye on the developments and possible changes to the legal framework. This not only applies to possible further sanctions imposed by the EU on Russia, but also on potential countermeasures that are currently being contemplated by the Russian government and that target companies and individuals who comply with EU sanctions against Russia. ←

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Sustainability and Human Resources

By Michael Magotsch, LL.M. (Georgetown) and Oliver Otto

Problems approached from different angles in diverse teams are usually solved more quickly and, above all, more creatively. In dealing with customers and global tenders, companies without actual lived diversity will no longer be competitive.

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What does ESG have to do with Human Resources?

At first glance, not much - but far from it! For years, not only global companies have been dealing with issues that are now on everyone's lips with buzzwords like ESG, sustainability, and green compliance. "Human Capital" is more than ever the focal point of successful management in a firm. Under the generic term "compliance", executive boards, PR and public policy teams, HR departments and works councils (in co-determined companies) are working on increasingly complex Codes of Conduct. This did not just start with the recent ESG hype.

What are the labor law issues?

Today's pandemic has brought topics like health and safety at work, work time rules, employee data protection but also factors such as diversity, gender equality and employee satisfaction to the forefront. The EU Commission recently codified reporting obligations on some of these is-

sues. The Corporate Sustainability Reporting Directive (CSRD) is scheduled for adoption in the second quarter of 2022 and will become effective from 2023. It provides for far-reaching regulations and broad reporting requirements for large companies with a focus on health protection, workplace safety, social responsibilities, and gender equality. These reporting obligations will affect all matters that are material to business performance or have an impact on environmental and social issues. They will cover working conditions under health and safety aspects, from work-life balance and diversity to human rights standards. The latter will be of particular importance in the area of global supply chains. The EU recently announced a Supply Chain Act which is expected to contain even stricter regulations on due diligence and reporting obligations than the German LkSG: Bonus payments to executives, for example, will be directly linked to complying with due diligence.

> "Any illegal behavior or accusations of corruption or bribery do immense damage to a company's reputation and corporate culture."

ESG has found its way into the daily routine of management boards and HR departments. In addition, companies are faced with a constantly rejuvenating workforce which demands more in terms of workplace attractiveness and satisfaction, social environment, and an employer's clear commitment to environmental issues and climate protection. Generation Z (birth cohorts from the late 1990s to the early 2010s) will already make up more than 70% of the workforce in the next five years: In the often-cited "war for talent", companies will no longer be competitive without a sustainable and credible ESG record.

No sustainability without compliance

Not only since the bribery and corruption cases involving big names in German industry and business has the issue of "compliance" been a central component of any corporate management with integrity. Any illegal behavior or accusations of corruption or bribery do immense damage to a company's reputation and corporate culture. In order to meet the ever-increasing regulatory requirements in the 21st century, however, clear rules and unwavering adherence to strict guidelines are essential.

Compliance departments have sprouted everywhere in the last few years and compliance officers are now appointed to executive boards. Legal and HR departments do well to continuously sensitize their own management teams as well as the entire workforce to the issues of compliance. Internal (and external) processes are laid down in binding codes of conduct and comprehensive guidelines of behavioral measures. Corporate and leadership cultures are defined or created where they do not exist. But all of this will only be successful if compliance is also exemplified and practiced in everyday life by the top management, from the C-suite "top to bottom" to minimize risks, optimize business relationships with customers, and ensure a concern for social issues within the framework of sustainable HR management.

Globally active companies have long-standing - and financially burdensome - compliance experiences, not least in the area of employee data protection. Data protection violations have led to considerable fines and the General Data Protection Regulation (GDPR), also based on an EU directive, has clearly standardized requirements in this area, which has led to a large number of costly technical and organizational measures in company practice.

The CSRD must be transposed into German national law by December 2022 and companies are well advised to initiate internal due diligence proceedings to prepare for a timely implementation. In the event of co-determined companies, be aware that consultation requirements with local works councils are time consuming and will require extra attention. In the first step, the CSRD will apply to large public interest companies, i.e., companies with a workforce of more than 500 employees, and thus it will affect all listed companies including banks, financial institutions, and insurance companies. If the schedule remains as is, sustainability reporting obligations will then also be expanded to small and medium-sized companies of public interest as of 2026.

Familiar topics which are discussed in the context of whistleblowing regulations will also raise comparable questions here: Will, for example, separate reports be necessary in group structures, or may subsidiaries rely on group

reports? In international contexts, this will no doubt cause headaches for global companies.

Diversity and more flexible working hours

Diversity is another buzzword of our time. What does diversity have to do with sustainability and what does the tiresome topic of the outdated German Working Hours Act (ArbZG) have to do with ESG?

In more and more companies today, people of different backgrounds and cultural affiliations make up the workforce. Age, sexual orientation, ethnic origin, religion, and ideology pose great challenges for every HR department and all levels of management. At the same time, diversity offers clear advantages: Problems approached from different angles in diverse teams are usually solved more quickly and, above all, more creatively. In dealing with customers and global tenders, companies without actual lived diversity will no longer be competitive. In this context, top young talents look very closely at the social environment of an employer and well-educated and trained employees require multi-layered support programmes and initiatives to lure and keep them.

The coronavirus marks the beginning of a new era that will see working time completely rethought - in Germany and elsewhere. There is no way around this, even if Hubertus Heil, the German Secretary of Labor, stubbornly opposes change and clings to the ArbZG despite persistent appeals from labor law experts. The Working Hours Act is not 100 years old, as is our Works Constitution Act (BetrVG) which has recently undergone a more than questionable modernization by the new German Traffic Light Coalition. The strict "Nine to Five", five-day week no longer reflects today's reality and Gen Z will be demanding even more flexible working time models, be they mobile, agile, or hybrid working.

> "Large enterprises as well as small and medium-sized companies will soon risk having to pay more for financing and other banking services if they have not integrated clear sustainability strategies."

A creative and flexible approach to the topic of working time will drastically promote sustainability in companies. In the end, only those companies that do not shrug their shoulders and leave things as they are will be competitive.

Conclusion

Sustainability has long been a part of German labor law but - true to the motto of the coalition agreement, "dare to progress" - there is much yet to be done.

In line with EU-driven topics like data protection, whistleblowing and supply chain regulations, sustainability reporting obligations will add substantially to the already complex set-up of existing compliance guidelines. Companies and their management teams must be wary of greenwashing activities which will constitute important reputational risks for companies and HR departments will feel the pressure of ESG-related requirements and duties landing at the center of their responsibilities.

Banks and other providers of capital are putting business relationships with their customers to the test with regard to sustainability. Large enterprises as well as small and medium-sized companies will soon risk having to pay more for financing and other banking services if they have not integrated clear sustainability strategies. It is advisable to take measures to incorporate diverse sustainability action plans at an early stage in order to remain competitive with regard to the increased requirements of banks and one's own product or service sales and also to remain attractive for employees and applicants. ←

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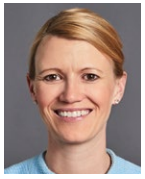
One of a kind

The German Supply Chain Act

By Dr. Kathrin Bürger, LL.M. (New York)

The German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz - LkSG) commences in 2023. Within the first step, companies with more than 3,000 employees fall into the scope. From 01.01.2024, the threshold drops to 1,000 employees. In addition to the requirements for risk analysis and prevention regarding compliance with environmental protection and human rights, companies within the scope of the law are also required to implement a complaints procedure, which has only been regulated partially by law. However, the effective usability of this procedure is part of risk management, in addition to the fact that improper implementation or failure to implement it is subject to a fine. Only if the complaints mechanism works along the supply chain can companies be sure that there is neither a violation of the covered twelve human rights nor of the covered eight environmental risks, or that there is a sufficient probability of such a violation.

German Supply Chain Act: Implementation in individual cases is complex due to the large number of premises to be fulfilled and cases to be depicted. It is therefore essential to deal comprehensively with the individual situation in the company, not only to fulfill the legal requirements with regard to implementation, but also to do justice to the immense significance.



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Not just the company – but along the entire supply chain

The law itself and therefore the legal obligation in § 8 LkSG is linked to the company. In fact, however, an internal company implementation would not be sufficient but rather the establishment of a complaints system which could be used within the entire supply chain is necessary. That must cover all direct (§ 8 LkSG) and indirect (§ 9 LkSG) suppliers. An external system could be used, but this does not exempt companies from the obligation to comply with the statutory regulations. The obligation solely changes to review/monitor the activities of the external provider.

Accessibility of the complaints procedure

The complaints procedure must be publicly accessible, clear and understandable. In addition to the fact that "persons", not “employees”, can make use of it, the complaint procedure must be implemented for all individuals within the supply chain. Consequently, it is necessary to set up a system that has no restrictions in use, be it linguistic, textual, technical or local. This raises various questions for implementation, such as the language in which the procedure is to be used and how to deal with people who cannot read nor write or who do not have access to the internet, insofar as a technical system is set up. The restriction in usability usually results from the supply chain as such. It is not necessary that "anyone" can make a complaint. Rather, "only" everyone along the supply chain must be given this opportunity. Thus, the question of the type of system as well as the content requirements differs according to where potential whistleblowers are employed.

Confidentiality not anonymity is key

Confidentiality of those involved in the complaint process must be maintained. There is agreement that this means that the identity of the complainant must be protected. This protection must be ensured comprehensively, so that any further information that allows a conclusion to be drawn about the identity of the whistleblower must also be treated confidentially.

Confidentiality does not mean anonymity. The most important task therefore is to protect the complainant. This protection must be ensured comprehensively, so that any further information that allows a conclusion to be drawn about the identity of the whistleblower must also be treated confidentially. Confidentiality is essential to the extent that the implementation of such a procedure can only be profitable if it is also used. If the confidentiality of the entire procedure cannot be adequately maintained, the likelihood of its use is reduced. The use of the complaint procedure is based on a free will decision by the complainant, so that this will only take place in cases where trust in its use can be built up. In any event, this means that only those who are absolutely necessary for the investigation or resolution of the incident can be involved.

Confidentiality also extends to the company, but not to the subject of the complaint. The report and the subject matter can thus be treated separately, provided that no inferences can be drawn.

Protection against any unreasonable disadvantage

This covers any action by the company that represents a - negative - reaction to the filing of the complaint. It is immanent that comparable other employees who have not filed a complaint do not experience this and are thus treated differently. All unilateral measures are covered, such as warnings, transfers, dismissals, leaves of absence, etc. Inadmissible, however, would also be a failure to act, which could be reflected, for example, in a promotion not being granted. In a first right conclusion, further measures are also prohibited. Examples include intimidation, threats, and coercion. This should also include third parties, i.e., not only the person making the complaint but also his or her relatives and other related persons.

The prohibition of discrimination applies both to persons who make a justified complaint and to those whose complaint is unjustified. The intention is to protect the willful decision about the use of the procedure.

Participation of (local) committees

The explanatory memorandum to the Act provides that the target groups of the grievance mechanism are to be consulted about the design of the procedure. However, no statement is made on the nature of the participation as

such. The participation of all persons involved in the supply chain can be regarded as unrealistic, so that here, too, reference can be made to employee representatives in the indirect and more direct supplier companies.

If for the German company a works council exists, a right of co-determination can be assumed in any case insofar as legal requirements are not implemented solely and exclusively. Section 87 (1) No. 1 of the Works Council Constitution Act (BetrVG) is applicable for the establishment of binding rules of conduct as well as Section 87 (1) No. 6 in the event a technical system is used for issuing the complaints.

Next steps to take

Implementation in individual cases is complex due to the large number of premises to be fulfilled and cases to be depicted. It is therefore essential to deal comprehensively with the individual situation in the company, not only to fulfill the legal requirements with regard to implementation, but also to do justice to the immense significance. The complaint procedure is used to report possible violations of prohibitions. This can only work in cases where there is confidence in the process as such on the part of the complainant. ←

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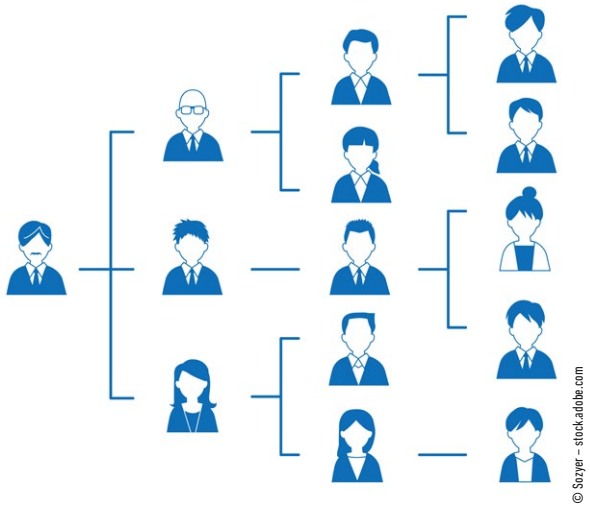
Reducing the pain points

Strong legal entity management practices lead to better business

By Blake E. Garcia, PhD, Giuseppe Marletta and Antje Teegler



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Legal entity management is becoming a salient topic in the increased regulatory environment in which organisations must operate.

In a globalised and interconnected economy, companies large and small face the challenges of complying with obligations in multiple jurisdictions, heightened and more diverse reputational risks, and reevaluating operating models and complex governance structures.

As such, legal entity management (LEM) is becoming a salient topic in the increased regulatory environment in which organisations all over the world must operate.

To learn more about how legal entity management is handled from the perspective of the legal department, the Association of Corporate Counsel (ACC), in collaboration with Deloitte Tax LLP, recently published the report **An Inside Look at Legal Entity Management Practices.** This comprehensive report studied LEM team structures, policies, procedures, and practices that organisations employ to manage corporate entities and regulatory obligations.

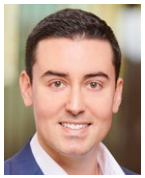
The report covered 520 organisations across twenty industries in 48 countries, including global multinationals. 46 percent of participating companies reported having operations in Europe, offering a comprehensive overview of the current trends on the continent.

One of the report's key findings is that organisations that implement a series of key leading LEM practices experience better business outcomes than those that do not.

LEM leading practices score

ACC identified eight leading practices that constitute a solid approach for European companies to adopt in order to effectively manage corporate entity governance:

1. Centralised, dedicated LEM team is in place
2. Written LEM policies and procedures are in place and followed
3. There is a single compliance calendar across the organisation
4. Organisational chart is updated at least quarterly
5. LEM testing, monitoring, and auditing are conducted regularly
6. LEM training and educational programmes are provided
7. Corporate records are tracked electronically
8. Legal department uses a LEM technology platform



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By combining the scores for each of these eight practices, we calculated an overall "LEM Leading Practices Score" for each survey participant ranging from zero (none of the leading practices are followed) to eight (all eight practices are followed).

The distribution of LEM Leading Practices scores shows a normal distribution, with most participating organisations following some, but not all, of the leading practices. Both the mean and median of the survey population were four, resulting in the average legal department following roughly half of the eight leading practices listed.

ACC then evaluated whether there were differences in business outputs between those organisations with a high number of leading practices in place and those that have fewer procedures in place, and the differences were remarkable.

Implementing LEM leading practices results in better business outcomes

Corporate entity management leaders were overwhelmingly confident about their organisation's ability to stay in compliance with regulations, and they were also more likely to be satisfied with their company's leadership and stakeholders being sufficiently attuned to subsidiary management processes from a governance perspective.

While most participants were at least somewhat confident that their organisation would have the ability to stay in compliance both in Europe and every country they operate in, the differences based on the company's Leading Practices Score are relevant: 90 percent of those on the upper end of the score range were very or somewhat confident, compared with just 64 percent of those with two or fewer leading practices in place.

> "The incidence of not having leading practices in place across the remaining options provided is noticeable."

The results are also truly clear when looking at the satisfaction with company stakeholders' awareness of corporate governance processes. Seven in ten of those with a high score were very satisfied or satisfied with the company's leadership role in LEM, while less than half of those with a medium score were satisfied, and only 31 percent of those with a score of up to two points.

In addition, those who implemented at least seven of the eight leading practices were less likely to experience delays in updating their corporate records and were less likely to have their entities be out of good standing with regulators.

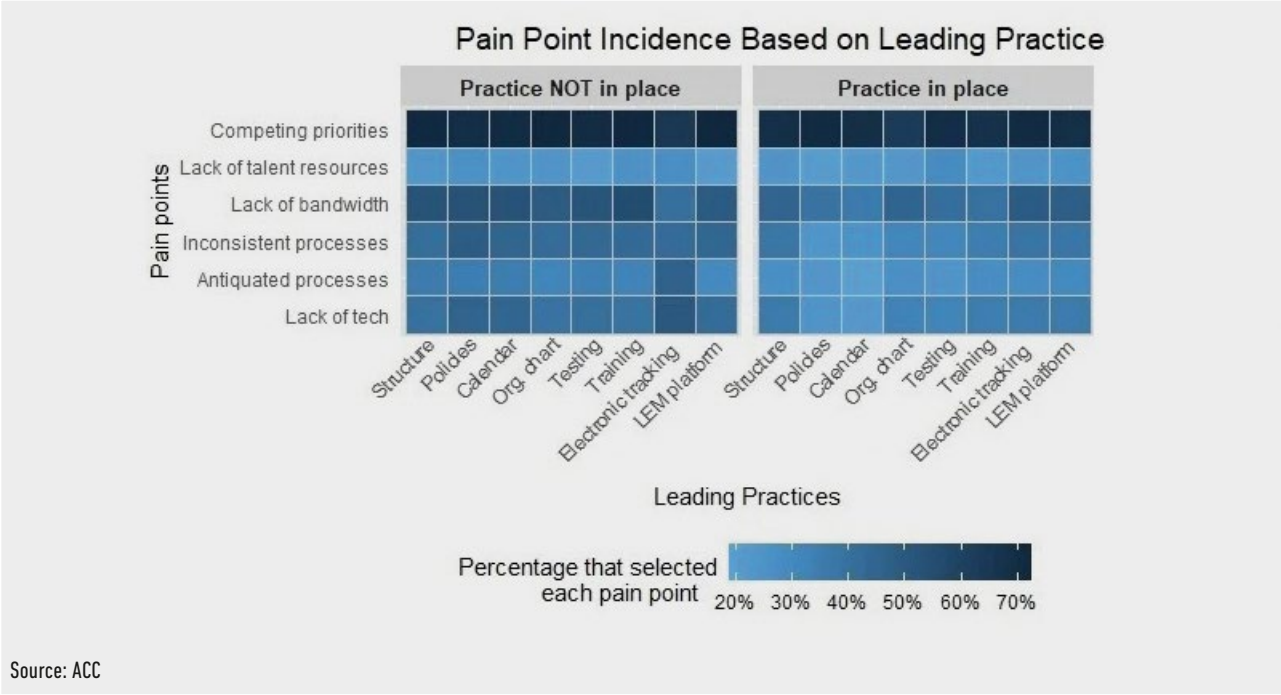
Companies not following LEM leading practices experience more pain points

Similarly, companies that do not follow LEM leading practices tend to experience pain points to a larger extent. The following tile chart shows the percentage of respondents that selected each of six different pain points related to corporate entity management based on whether they have each of the eight leading practices in place or not.

Darker tiles indicate a larger percentage of respondents selecting the pain points listed on the vertical axis, while lighter tiles indicate a lower percentage of incidence for a particular pain point. Competing priorities is the main pain point experienced by all participants, while lack of talent resources does not concern most participating organisations.

The incidence of not having leading practices in place across the remaining options provided is noticeable. Those who do not have leading practices in place are more likely to say that lack of bandwidth is an issue. More specifically, those who do not have written policies and a single compliance calendar are more likely to select antiquated and inconsistent processes and lack of technology as pain points compared to participants that do have written policies and a single compliance calendar.

Also, respondents who do not track corporate records electronically report antiquated processes and lack of technology as two pain points that they experience to a significantly larger extent than participants in organisations that use technology to track corporate records. These results further showcase the importance for European companies to adopt technology to operate more efficiently.



Source: ACC

Learn more about legal entity management

The **full survey report** contains more detailed insights on the positive impact that implementing LEM leading practices has on other business outcomes for global and European organisations alike.

Other relevant **key findings** relate to the growing focus on LEM based on staffing numbers and budgeting, the worrying discontent of survey participants with the LEM technology platforms available, and the struggles that many companies face in terms of establishing solid LEM policies and practices.

To learn more about this topic, these ACC resources might have the solution you are looking for:

- How to build a data-backed ethical and compliant culture? In-house teams are providing strategic counsel and risk management, and a top priority in 2022 and beyond should be ethics and compliance. The reason? Establishing (or enhancing) a value-based ethical and compliant culture can help limit legal exposure and improve financial results, boost employees' happiness, and sharpen a brand's image. **Are you ready to measure performance in the areas of compliance, ethics, and risk? Get started!**
- Join our panel of in-house thought leaders, and improve your understanding of the policies and practices that organisations have in place to manage complex compliance and regulatory obligations. **Watch this free online programme now from your desk, and learn from your peers.**
- Connect with like-minded peers and tap into the wisdom of the crowd when tackling your company's legal and business issues, or starting a new initiative. **Join one of 21 ACC networks to exchange ideas and expertise on policies, best practices and more.**
- Are you tasked with developing protocols and processes to identify compliance risks as they arise in jurisdictions your enterprise does business in, and correct them in real-time? **Advance your organisation's compliance function by saving time and resources with ACC's compliance toolkit.** ←

Lawyer well-being: "Are you crazy?"

The efforts in the German legal market have only just started

By Kai Jacob, Dr. Dierk Schindler, Dr. Bernhard Waltl

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The legal profession is exposed to numerous mental health risks. In recent years, the pressure and uncertainty associated with digitalization made the situation worse.

Why lawyer well-being? All is well with us lawyers, isn't it?

"Are you crazy - mental health is not an issue for lawyers!" This could be the answer to the question about the (mental) health status of lawyers. Lawyers are trained to keep a cool head even under high pressure, to give clients a feeling of security in critical situations, to put on the poker face in negotiations and - if necessary - to act against their own moral compass. Lawyers should always see a way out, be always available as advisors and act as a rock in the surf to guide clients safely and, of course, as unscathed as possible through the legal jungle. It is about responsibility for the interests of others, often in difficult and complex situations. There is no room for personal fears, weaknesses,

doubts, and uncertainties. The legal profession thus is exposed to numerous risks for mental health. In recent years, the pressure and uncertainty associated with digitalization made the situation worse. Communication efforts are increasing, we are overrun by documents and data, and the latent risk of outdated IT systems accompanies our practice. Be honest, ...

1. how many hours do you spend in virtual meetings per week?
2. how many emails do you receive and write every day?
3. how many pages of PDF documents do you get "FYI" every day? And how many of them do you read?
4. how many decisions do you take in your job, that are not totally aligned with your moral compass?
5. how often is your rest at the end of work (if any) or on weekends (if any) interrupted or disturbed by constant availability - made possible by technology?

Conclusion I:

Due to their activities and the expectations placed on them, lawyers are heavily exposed to mental health risks.

What is the state of mental health of legal professionals?

Since the 1990s, mental health studies of male and female lawyers in the U.S. have shown an alarming picture: hey are notoriously overrepresented in mental illness. Suicide was the third most leading cause of death among lawyers in 2006 - after cancer and heart attacks. They are three times more likely to live with addictive disorders and were nearly six times more likely to commit suicide than the population average. The situation has not improved much so far, as the American Bar Association noted in a large-scale study of 13,000 participants in 2016: "(B)etween 21 and 36% qualify as problem drinkers, and approximately 28%, 19%, and 23% are struggling with some level of depression, anxiety, and stress." (P. R. Krill, R. Johnson, & L. Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION MED. 46 (2016)).

Now, one could argue that this is a study specific to the Anglo-American area and that there are no reliable figures for Europe or for the German-speaking countries. Information on suicides among lawyers is neither available for the German-speaking countries nor does this professional group appear in the available statistics. There are also only very few surveys that consider mental illnesses or concrete stress-related burdens in the world of work.

Hence, the Liquid Legal Institute clearly focused on this topic last year: First, a small, non-representative survey was launched, and the results published in a report. Already this questionnaire showed that over 60% of lawyers said they had experienced "work-related mental health problems" at least once in their lives. Over 70% stated that they know colleagues who suffer from work-related mental health problems. Furthermore, more than 80% of the respondents agree that the issue of lawyer well-being needs more attention and social consideration.

On this basis, we conducted a larger study in German-speaking countries together with partners, including the German Association of Corporate Counsel (Bundesverband der Unternehmensjuristen, BUJ e.V.) and EUPD Research, which allows similar conclusions to be drawn about the state of health of lawyers. The alarming results from this large study are publicly available (**https://www.liquid-legal-institute.com/library/**).

The new CHA Award "Legal" and the Seal for Excellent Lawyer Well-Being "Inhouse"

While our study results confirm what has been known for years in other regions of the world, we must not stop there! Given the sensitivity and complexity of the issue, this is easier said than done. Significantly supported by Zoë Andreae, Managing Director of Lecare GmbH, a separate "Legal" prize, the so-called Corporate Health Award (CHA), was launched. To this end, all companies in the legal sector are invited to outline their measures for employee well-being in the legal sector. This expressly includes (legal tech) start-ups, and alternative legal service providers. An independent jury evaluates the submissions, audits the submitted documents, and conducts interviews if necessary. The winners will receive the Corporate Health Award Special Prize "Legal".

But we went even further than that. Together with our partners, we are now also offering a seal for excellent lawyer well-being

for legal departments and administrative lawyers in the public sector that makes health related commitment and achievements visible.

We hope that both the award and the seal will help raise awareness of the issue so that in the end, the lawyers - the human beings - are the true winners.

Conclusion II:

We create positive incentives so that companies can address the issue. The corporate health award "Legal" and the creation of a seal for excellent lawyer well-being for legal departments will push the topic out of the taboo zone and into the light of public awareness.

How do we continue? Together!

We thereby also aim to provide objective evidence on a highly relevant topic. We must focus a lot more on the person behind the role of lawyer and his or her stance in the modern working world, nothing less.

However, study results and awards are only steps on a long road that no one must travel alone. The LLI, with all its members and (future) partners, invites you to take the next steps together. We expect that there will be greater demand in the field of law because companies are only starting to understand the issue. We also need to create an environment for further training and qualification so that something can change in the long term. In addition, the findings and considerations must not only be passed on to the participating companies, but universities should be invited to make those findings part of their education curriculums. And finally, more reliable data must be collected through interviews, studies, surveys, etc. to understand the issue and the causes even better and to take targeted measures.

Conclusion III:

The efforts in the field have only just started. We must continue to work together to ensure that the legal market continues to offer livable and appropriate working conditions in the future. ←

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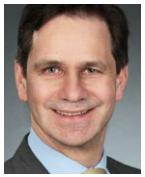

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