PKF DEUTSCHLAND

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Key Issue

Sustainability reporting – A step-by-step guide

Part I - Legal development, overview of requirements and ESRS 1

Dear Readers,

The **German Growth Opportunities Act** should actually have still been passed in 2023 and should have come into force in January. Instead, the Act became a political football for the ruling parties and the opposition and, as a result, there is almost nothing left of it. In our Tax section, you can read about what is still supposed to come and why even that will not happen if the farmers do not get back their subsidies for agricultural diesel again.

In the Accounting & Finance section we begin with the first part of our **new series of articles on sustainability reporting**. For most large companies there is just the time that remains in 2024 to make preparations so that they will be able to report on ESG topics for 2025 as part of their management reporting. The focus of our Key Issue report in this edition of our newsletter is on the overall legal classification and the first of the twelve reporting standards, which have already been issued in this respect at the EU level. The contents of these European Sustainability Reporting Standards (ESRS 1) have been outlined in a table.

It is now possible to use **artificial intelligence** - or AI - **professionally relatively easily** via ChatGPT. In our first report in the Legal section we discuss the **problems in relation to employment rights, data protection legislation and copyright** that may arise as a consequence of using AI. Subsequently, we take a quick look at how, in the case of unauthorised bank transactions, board members and **managing directors** could potentially **limit their liability** by being responsible for specific departments. It should however be noted that supervisory obligations will remain.

Finally, in short reports, as always you can find current information, here in particular, on the recommendation to **keep records of bank statements** as well as information and details regarding online cancellation.

Then, through the illustrations that break up the reports from our experts, we continue our journey, which we started in the last issue of our newsletter, around the United Kingdom - this time we visit Northern England, Wales, Northern Ireland and Scotland.

We hope that you will find the information in this edition to be interesting.

Your Team at PKF

Front cover photo: Portree, Isle of Skye, Scotland

Key Issue

Sustainability reporting - A step-by-step guide

Contents

StB [German tax consultant] Luca Spillmann

German Growth Opportunities Act 'lite' – What has remained?

In the following section we provide an overview of the amendments made to the Growth Opportunities Act within the framework of the outcomes agreed as a result of mediation. First of all, we set out the provisions that were adopted with some adjustments. These are then followed by a list of measures that, when compared with the previous draft of the legislation, were deleted without replacement.

1. Prolonged negotiations

In the course of the legislative procedure, intensive political discussions between the German federal and state [Länder] governments led to the Mediation Committee having to work out a new compromise on the Growth Opportunities Act, on 21.2.2024, and to pass it without the votes of the CDU/CSU. The new draft legislation was then approved by the Bundestag [lower house of German parliament] already on 23.2.2024; now, the Growth Opportunities Act still has to be passed by the Bundesrat [upper house of German parliament] at the session scheduled for 22.3.2024. If the approval of the CDU/CSU still fails to materialise in the Bundesrat then the Mediation Committee may have to deliberate again, or a completely revised version of the draft legislation might be necessary. The CDU/CSU continue to make their approval for the Growth Opportunities Act conditional on the cancellation of the planned elimination of tax subsidies for diesel fuel in agriculture.

Please note: Some of the measures that were originally included in the Growth Opportunities Act were implemented in 2023 already via a separate legislative procedure within the framework of the Sec-

Liverpool - Pier Head and the Three Graces ondary Credit Market Act (Kreditzweitmarkt). This includes, in particular

» the consequential tax changes in the wake of the coming into force of the Act on the Modernisation of Partnership Law,
» the reform of the interest barrier rule and its adaptation to the requirements of the Anti-Tax Avoidance Directive (ATAD) as well as
» a tax waiver on the natural gas emergency aid in December 2022.

2. What remains - Measures revised by the Mediation Committee

(1) Loss carryforward - The portion over and above the basic loss amount of €1m (individual tax assessment) or €2m (joint tax assessment) that may be carried forward for offsetting for income tax purposes as well as for corporation tax purposes will be increased for the 2024 to 2027 assessment periods to 70% of the overall amount of income (prior to the Mediation Committee: 75%). The current percentage limit of 60% will be applicable once again as of the 2028 assessment period.

(2) Declining balance method of depreciation - A distinction has to be made here between depreciation for buildings and the declining balance method of depreciation for long-term movable assets. The latter was previously limited to acquisitions and production carried out up to 31.12.2022. Now, it will also be possible to use the declining balance method of depreciation for assets acquired after 31.3.2024 (prior to the Mediation Committee: 30.9.2023) and before 1.1.2025. During this extended period, the applicable percentage that may be charged will be, at most, 2 times that of a straight-line depreciation percentage and may not exceed 20% (prior to the Mediation Committee: 2.5 times and a maximum of 25%). Charging declining balance depreciation of 5% (prior to the Mediation Committee: 6%) will be made possible for buildings that are used for residential purposes and that were constructed by the taxpayer themself or acquired at the end of the year of construction. The conditions require that the start of construction or the conclusion of an obligatory purchase agreement will have to have taken place after 30.9.2023 and before 1.10.2029.

(3) Special depreciation - The special depreciation pursuant to Section 7g(5) of the Income Tax Act (Einkommenssteuergesetz, EStG) will be increased from the previous level of 20% to 40% (prior to the Mediation Committee: 50%).

(4) Reduced payroll tax rate - Currently, there is a payroll tax deduction option available that enables a reduced tax rate to be claimed for certain types of remuneration pursuant to Section 34(1) EStG, however, from 2025 it will only be possible to claim this in the context of a tax assessment (prior to the Mediation Committee: 2024).

(5) Application for tax assessment - A new feature in the legislation that will be introduced is a tax assessment for employees that have restricted tax liability in Germany and that receive remuneration that has to be taxed at a reduced rate. This option should be available from the 2025 assessment period (prior to the Mediation Committee: 2024).

(6) Preliminary VAT return - Businesses whose VAT liability for the preceding calendar year was no more than €2,000 will, from 2025 (prior to the Mediation Committee: 2024), be able to obtain an exemption, from their local tax office, from the obligation to submit preliminary returns and make advance payments.

(7) Research allowances - There are plans for an increase in the share of eligible costs as defined in the German Research Allowance Act from the current 60% to 70% from now on. Furthermore, the increase in the maximum assessment base, which was hitherto time limited, will become permanent and will be fixed at €10m (prior to the Mediation Committee: €12m). These changes shall apply from the day after the promulgation of the Growth Opportunities Act (prior to the Mediation Committee: from 1.1.2024).

3. Provisions that will no longer feature in the legislation - Measures deleted without replacement

Disappointingly, the remaining measures are merely a lite version of the original proposal, as the following list of points that were deleted without replacement demonstrates. There will no longer be

» the introduction of an investment premium for climate change mitigation in the amount of €30m for domestic (German) enterprises,
» an extension to the loss carryback period to three years and, at the same time, an increase in the maximum amount to €10m (individual tax assessment) or €20m (joint tax assessment) for the 2024 and 2025 assessment periods,
» an increase in the amount limits from €800 to €1,000 for low-value assets that can be depreciated immediately as well as from €1,000 to €5,000 per asset for those that can be included

in compound items; the planned reduction in the reversal period for compound items from five years to three years was likewise deleted without replacement,

» the introduction of an exemption limit in the amount of €1,000 for income from letting and leasing,
» an increase in the blanket allowances for additional expenses for meals,
» an increase in the tax-exempt amount for company events from €110 to €150,
» an increase in the subsidy rate for the tax incentives for energy-related renovation measures as defined in Section 35c(1a) EStG from 20% to 30%,
» a reduction in the average rate for farmers,
» the earlier phasing out of the time-limited reduced taxation of gas and heating supplies,
» the introduction of a reporting obligation for domestic (German) tax structures as well as
» the abolition of the range alternative for hybrid passenger cars where rental and leasing payments are added back for trade tax purposes.

ACCOUNTING & FINANCE

WP/StB [German public auditor/ tax consultant] André Jänichen

Sustainability reporting - A step-by-step guide

Part I - Legal development, overview of requirements and ESRS 1

The EU passed the so-called Corporate Sustainability Reporting Directive (CSRD) with a view to improving and further developing sustainability reporting in the EU. One of the most important requirements in this EU Directive is compliance with the European Sustainability Reporting Standards (ESRS). Starting from this year already, the first companies will be obliged to write their reports in accordance with these guidelines. In a multi-part series of articles we will provide a systematic presentation of the sustainability reporting guidelines. The focus here will initially be on the non-listed large companies that will be subject to this reporting requirement from the 2025 financial year. However, given that large companies and capital providers will pass on the respective requirements to smaller companies (keywords: supply chain, ESG ratings), we would strongly recommend that even small and medium-sized enterprises that are not directly affected should nevertheless make appropriate preparations.

Please note: In this issue of our newsletter we begin with a compact overview and analysis of ESRS 1. We then plan to provide step-by-step considerations of other guidelines and measures; for example, in the next issue of our newsletter we will have a report on the materiality assessment - this is of fundamental importance for all the further steps.

1. Temporal scope of application and embedding in the overall financial reporting

The reporting requirements will be phased in over time as follows:

» **2024** - All the large capital market-oriented companies will be affected by the new reporting in accordance with the CSRD already from the 2024 reporting year.
» **2025** - Moreover, non-capital-market-oriented companies with limited liability will have to comply with the new reporting requirements under the CSRD from the 2025 reporting year if these companies fulfil at least two of the following three criteria on two consecutive reporting dates:
  ▪ more than 250 employees and/or
  ▪ net revenue of more than €50m and/or
  ▪ total assets of more than €25m
» **2026** - Furthermore, listed SMEs will then be subject to the reporting requirement from the 2026 reporting year (they have the option to postpone this for 3 years).
» **2028** - From the 2028 reporting year, non-European companies that generate net revenues of more than €150m in the EU and have at least one subsidiary or branch office in the EU will likewise have to carry out the relevant ESG reporting.

The transposition of the CSRD into German law is expected to take place in the second quarter of 2024.

It is already clear that, in future, the sustainability report will appear solely in a separate section of the management report. This report will thus be published jointly with the annual financial statements (so it will not be a special report!). Consequently, as the sustainability report will form part of the management report it will be subject to the external audit requirement.

In terms of presentation, the EU Directive has taken into account the unstoppable trend towards digitalisation. Electronic labels will thus have to be assigned to the individual datapoints that have to be disclosed (the ESRS that have so far been published on their own mention more than 1,000) - this is referred to as digital tagging. This needs to be carried out in a single electronic reporting format (ESEF).

Please note: In order to make it possible for the sustainability report to be audited for an entire financial year, in each case, companies will have to create the organisational conditions by the end of the end of the respective previous financial year.

This means that, in 2024, large non-listed companies should already put themselves in a position that will enable them to comply with the extensive sustainability reporting requirements from 1.1.2025.

2. Overview of the report content requirements

Specific information about a report's contents has been provided by the ESRS, which were essentially developed by the European Financial Reporting Advisory Group (EFRAG). These standards aim to ensure the relevance and, in particular, the quality of the information that is to be disclosed.

The ESRS thus specify the contents about which companies have to provide information in their sustainability reports in accordance with the CSRD. The goal is to ensure

» the understandability,
» the relevance (avoiding information overload) as well as
» the verifiability and comparability

of the sustainability information. The ESRS currently consist of Set 1 with the first 12 ESRS. This first group of ESRS comprises non-sector-specific standards divided into four sections - these are depicted below in Fig. 1. In the next section we provide a closer examination of the general ESRS 1 which comprise standards that cut across topics.

Please note: The introduction of sector-specific ESRS will follow, however, this has currently been postponed in order to avoid placing excessive demands on those involved.

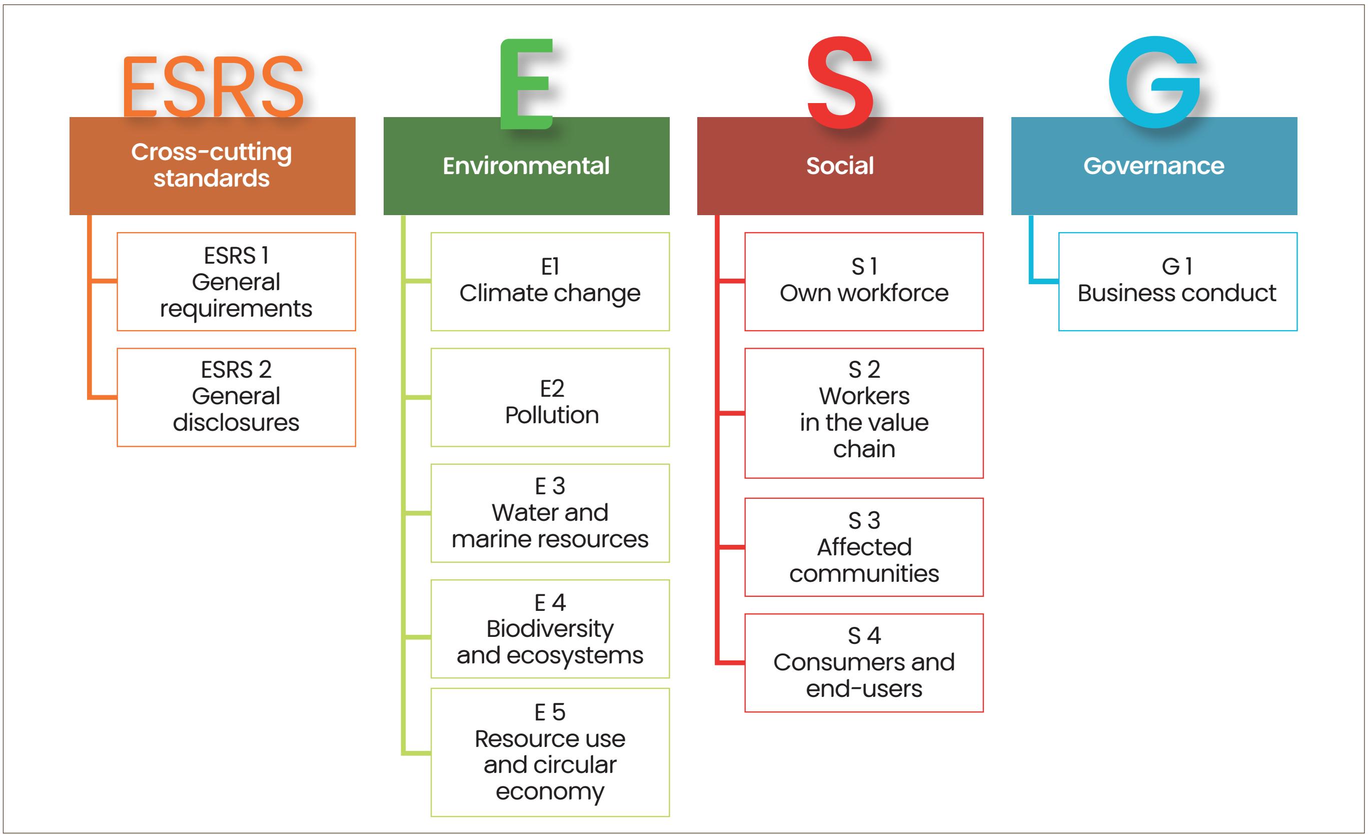

Fig. 1 Overview of Set 1 of the ESRS

3. The ESG context

ESG stands for environmental, social and governance activities of companies in individual sectors. From now on, companies will have to disclose relevant company data that relate to the above-mentioned areas.

- **Environmental** refers to impacts on the natural environment. The aim here is to achieve a reduction of the ecological footprint and to minimise environmental pollution (in particular, via energy consumption, greenhouse gas emissions or the product life cycle across the entire supply chain).
- **Social** covers the social aspects of a business, such as among other things, the impacts on employees, suppliers or customers. Topics such as diversity and inclusion, human rights, occupational health and safety as well as social engagement are included in this area.
- The **governance** area essentially relates to the responsible management of companies in the areas of corporate culture, risk management and corruption.

In order to operate as a sustainable business it is precisely those impacts on the environment, society and corporate governance (ESG) that have to be identified and it is necessary to ensure that your own business model is future-proof. In the meanwhile, many studies have demonstrated that, in the future, stakeholders such as customers or investors will increasingly align their decisions with these ESG factors.

Up to now, companies have generally been able to freely select a framework for their sustainability reporting. The standards of the Global Reporting Initiative (GRI) have been the most commonly used framework internationally as well as in Germany. Moreover, the German Sustainability Code (that also uses the GRI) has also been widely applied in Germany. Now, under the CSRD, the ESRS will constitute the mandatory framework.

4. General requirements under ESRS 1

The overarching norms contained in the ESRS 1 (general requirements) and ESRS 2 (general disclosures)

Edinburgh, Scotland

ESRS1 ▪ Sustainability reporting	
Objectives and structure of the standards	▪ three topics (ESG) ▪ Disclosure of material information on impacts, opportunities and risks (IRO) relating to sustainability information ▪ Implementation plans for concepts
Disclosure requirements	▪ Disclosure of information with the aim of being able to provide comparability (standardised) supplemented with company-specific information
Company-specific disclosures	▪ Performance metrics indicating that through measures it is possible to increase positive impacts and reduce negative impacts ▪ (Critical) evaluation of the measurability of metrics ▪ Disclosure of assumptions for the interpretation and comparability of metrics
Characteristics of the information	▪ relevance ▪ faithful representation ▪ understandability ▪ verifiability ▪ comparability
Double materiality	▪ Inside-out (impact of the company on people and the environment) = Impact Materiality ▪ Outside-in (impact of the environment on the company in relation to cash flows/enterprise value) = Financial Materiality
Value chain	▪ Material actual or potential IRO in reference to the value chain ▪ Products(groups), services etc. across the entire value and supply chains
Time horizon	▪ short-, medium-, and long-term targets ▪ backward-looking ▪ forward- looking
Due diligence	▪ identification and evaluation as well as management of the IROs
Requirements to be applied when preparing and presenting sustainability information	▪ General presentation principles ▪ Estimates and their uses ▪ Measures and action plans ▪ Disclosures on consolidated reporting ▪ Protection clauses
Linking to other areas of financial reporting	▪ Linking with the rules for the management report and annual financial statements ▪ References that relate to parts of the financial reports ▪ Ensuring consistency
Transitional provisions	▪ Reliefs and applications
Structure of the sustainability report	▪ Clearly definable and identifiable ▪ Recommendation: 4 Sections - General information - E-section - S-section - G-section ▪ Integration of the EU Taxonomy Regulation

Table 1

deal with the general principles that have to be observed when preparing ESG reports.

The subject matter of the ESRS 1 comprises, first of all, the general principles that have to be observed when preparing sustainability reports. Thus, there is a description of how the ESRS are structured, an explanation of the conventions used for their development and of the underlying concepts as well as the general requirements that have been specified for the preparation and presentation of sustainability-related information.

Moreover, ESRS 1 prescribes the minimum content of reports (cf. Table 1 on p. 9). As a consequence, a company's impacts, risks and opportunities (IRO) in respect of the environmental, social and governance aspects should become transparent. In particular, there is a requirement to make disclosures concerning corporate governance, the strategy or business model and how risks, opportunities and objectives are managed in the company. Furthermore, the standard covers, among other things, the information that will not yet necessarily have to be reported in the initial years and what should be understood by the reporting principle of double materiality (cf. Table 1, row 5).

Takeaways

- The CSRD will result in very extensive requirements in the area of ESG reporting; the user group will be gradually significantly expanded.
- The reporting will comply with the new ESRS (European Sustainability Reporting Standards) as part of the management report.
- There will be a marked increase in GRC (governance, risk, compliance) requirements for companies.
- There will be a massive impact on supply chains, bank financing, staff recruitment and many other areas
- and all this under intense time pressure.

LEGAL

David Dornau

AI in the workplace - The risks call for guidelines and operational instructions

The chatbot ChatGPT was launched by OpenAI, a US American company, in November 2022. Since then, such so-called large language models (generative artificial intelligence, AI for short) have played a role in a very wide variety of situations in everyday life - a broad range of diverse conversations have been held with them and miscellaneous tasks are carried out by them. The question that has now arisen is: under what general conditions may employees likewise use AI applications in their day-to-day work?

1. Legal barriers to the use of AI

AI users can have texts or other contents - such as tables, graphics or also program codes - created in accordance with their specifications by text-based dialogue systems. These many different possible applications as well as the rapid and low-threshold use to solve, in some cases, complex tasks makes the application of AI for professional purposes likewise attractive. Consequently, however, problems may arise in relation to employment rights, data protection legislation and copyright and we have considered these in the section below.

1.1 Employment rights

From an employment law perspective, first of all, it is questionable whether the application of AI is compatible with an employee's personal performance obligation under Section 613 of the German Civil Code. According to this, employees are obliged to provide their services in person. In this respect, the question that then arises here is whether the use of AI to carry out a task rather constitutes the use of a technical aid (such as, e.g., a word processing program) or an application that operates independently. In the latter case, this would then be comparable to transferring the activity to another person. On the basis of the current state of the art and the German interpretation of the law it is thus possible to answer that AI has to be regarded as merely a work instrument and auxiliary tool. This correlates with the fact that AI has not been assigned a separate legal personality and a final check by the user remains absolutely necessary. Therefore, according to the current understanding, the obligation to provide a service in person is thus maintained.

Employers are able to order or ban the use of AI, within the scope of their reasonable discretion, under their right to give instructions in accordance with Section 106 of the Industrial Code (Gewerbeordnung, GewO). Should an employer decide to ban or to restrict the use of AI applications then, in the event of the breach of such an obligation by an employee, the employer would have the standard measures under employment law at its disposal.

Furthermore, the employer should think about how and to what extent an employee should disclose that their output was produced with the help of AI. The use of AI-produced output could moreover have far-reaching consequences for the employer in the context of copyright or data protection. That is why employers should clearly define the use of AI-produced output for all parties.

It is also anticipated that AI applications will be used in human resources departments. Particular care should be taken to ensure that no so-called profiling is carried out.

Please note: A decision that is based solely on AI is not possible. AI may make recommendations, however, the final decision has to be made by a human.

1.2 Data protection legislation

From the perspective of data protection legislation, the relevant question is: to what extent may personal data be used in AI applications? If an employee enters personal data as defined in Art. 4(1) GDPR into text-based dialogue systems then the problem related to data protection legislation can be solved via the consent of the data subject in the processing procedure in accordance with Art. 5(1)(a) GDPR. To this end, however, knowledge of the precise nature

Glen Etive in the Scottish Highlands

of the data processing and the specific purpose of the processing will be necessary - this is something that mostly cannot be determined in advance when it comes to AI tools.

Recommendation: In this respect, as it is very difficult to use the personal data of the data subject in a way that is transparent and comprehensible, you should refrain completely from using such data in order to avoid the GDPR being applicable.

1.3 Copyright

The question that arises under copyright law is: when employees use AI are they nevertheless originators of the created material? According to Section 7 of the German Copyright Act, this would be the case if it was obvious that the employee had to be designated as the creator of the work. From this point of view, AI tools thus likewise have to be used as auxiliary tools and the user always has to perform a final check.

Please note: In particular, if the employer undertakes to provide an exclusive product for a customer then the employer could make itself liable on account of the lack of copyright protection.

2. Guidelines /operational instructions for employees

From the aforementioned legal problems of a nature pertaining to employment rights, data protection legislation and copyright, it is clear that AI tools should be understood to be auxiliary tools. During such use, care should be taken to ensure that only data is used that is abstract, fully anonymised and non-personal and that the user always performs a final check.

According to the current interpretation of employment law, AI tools are provided for in the right to give instructions in Section 106 GewO; consequently, this gives employers the possibility to control the use of AI via guidelines and operational instructions. It would be advisable to actually make use of this possibility and to take into account the above-mentioned aspects in the instructions.

Recommendation: In this way, employers would ensure that there are no breaches of data protection laws or of copyright at their companies. Furthermore, employers would put themselves in a favourable position in terms of employment law as, from the existence of such a guideline, every time employees' behaviour runs counter to it the employers would then be able to establish that there has been a breach of duty.

Outlook

If the rules for dealing with AI are addressed at an early stage in the form of a guideline then employees can be made aware of how to deal with AI in the long term and be optimally prepared for all further future technical developments.

RA/StB [German lawyer/tax consultant] Frank Moormann

Liability of executive bodies - Limits via the allocation of responsibilities

The liability of the executive bodies of corporations is a matter that routinely keeps the courts busy. Where there are several managing directors the principle of overall responsibility will apply, i.e. the managing directors will be jointly responsible and jointly liable. In a recent judgement, the Federal Court of Justice (Bundesgerichtshof, BGH) gave its view on the issue of the extent to which internal responsibility arrangements can restrict the liability of managing directors internally as well as externally and, in doing so, confirmed its previous ruling and developed it further.

1. Issue - Unauthorised bank transactions in the event of insolvency

The court's decision related to its ruling of 9.11.2023, case reference: III ZR 105/22, on a case where a corporation had wanted to realise real estate projects and had raised funds from investors for this purpose. This had involved bank transactions within the meaning of the Banking Act (Kreditwesengesetz, KWG) that may only be carried out with the appropriate permit from the German Supervisory Authority (BaFin). However, the company did not possess such a permit. After the company became insolvent, an investor subsequently sued one of the managing directors personally for damages. This managing director asserted that as the architect he had only been responsible for the technical area and had had no knowledge of the capital raising.

2. Ruling - While liability was restricted by the responsibility arrangements, ...

First of all, the BGH confirmed that the managing director of a company which effects unauthorised bank transactions may be liable to prosecution under the KWG and that, under civil law, personal liability for a tortious act could also be derived from this. However, for that it would be necessary to determine fault, which cannot be derived solely from the executive position (as the lower court believed).

Admittedly, the executive position as a managing director provides for a wide-ranging duty of care. However, this does not preclude the delegation of tasks and, thus, the transfer of responsibility. So, for example, while internal responsibility arrangements at the management level will not result in the abolition of responsibility under criminal and liability laws, such arrangements may however restrict it. Dividing up the business activities in such a way would mean that the managing director who is not affected would have limited responsibility internally and externally because that managing director would generally be able to rely on the competent managing director to carry out the duties that have been assigned to them.

... nevertheless, the supervisory obligations remained

However, on account of the overall responsibility, the managing director who is not in charge has supervisory obligations and breaching these could constitute grounds for liability on the part of that managing director. They are obliged to intervene when there are indications that the competent managing director is not fulfilling their duties properly. In the case in question, no findings concerning this were identified and this was why the matter was referred back to the lower court.

Tenement Houses in Glasgow

3. Recommendations

While the allocation of responsibilities/departments is not a mandatory requirement under the law, nevertheless, it would be advisable to record the existing allocation in writing and to clearly and unambiguously define the respective duties there. Such arrangements can be made by adopting a resolution at a shareholders' meeting. It is however also possible for the management to give itself the appropriate rules of procedure. Furthermore, each managing director should keep themselves informed about the performance of the duties of the co-managing directors and document the exercise of these duties in a suitable manner in order to be able to produce exonerating evidence in the event of a dispute.

IN BRIEF

Online Banking - Bank statements should be regularly backed up

These days, bank transactions are being performed more and more frequently via smartphones or PCs. Admittedly, the credit institutions regularly place bank statements in digital mailboxes for online banking, however, many bank customers spare themselves the trouble of archiving them or printing them out. Consequently, at some point or other, it will no longer be possible to retrieve the digital statements in the online banking portal and the bank customer will initially be unable to access their bank statements anymore; it would therefore be advisable to store the statements privately.

The reason for the restricted access is that the banks make the statements available in the customers' mailboxes for a limited period only. Depending on the institution, the length of time for which the statements are made available ranges from 90 to 365 days (or also longer in individual cases). According to the German Commercial Code, the banks are admittedly obliged to archive documents for ten years. However, if customers wish to have old bank statements issued subsequently, this process would be not just time consuming but customers would also have to pay for this - the charge for individual bank statements ranges between €4 and €15. At the very latest, this can become an issue if, when completing your tax return, the local tax office requires proof of payment. Even private individuals should therefore retain their bank statements for at least six years or, even better, for ten years.

Recommendation: Bank customers would therefore be well advised to print out their bank statements every month, or at least to store them or archive them digitally in a file so that they would be available for an indefinite period of time for a subsequent review, for printing out, or for sending digitally.

No VAT on students' cake sales

From 2025, Germany's public sector will also be generally subject to VAT. This will affect, among others, schools and day nurseries. The Finance Ministries in North Rhine-Westphalia and Baden-Wuerttemberg have clarified the conditions under which the cake sales there would not be subject to VAT even in the future. Bavaria likewise issued a decree.

The decree that was issued by the Bavarian State Tax Office on 21.12.2023 (reference: S 7107.2.1-37/20 St33) thus stated that sales by varying groups of students or classes, parent initiatives or student representative bodies would not be subject to VAT also in the future if the payments were not attributed to the legally and economically responsible school authorities, but rather the respective student groups or parent initiatives. This would be the case if these groups presented themselves externally (e.g., on notices, posters and flyers or by means of electronic media) and insofar as they could be regarded as an autonomous enterprising entity. For cake sales at school fêtes, as a rule, no VAT would thus arise because the individual student group or parent initiative would not be active in the long term and, therefore, could not be regarded as a business. This rule will also apply to other occasional sales by students or parents such as, for example, the sale of pizza. Likewise, entrance fees for performances by groups of stu-


Rhossili Bay Beach in the Bristol Channel in Wales

dents in schools, such as theatre study groups or the school choir would, in these cases, not be subject to VAT. Therefore, there will be no changes in current practice at schools.
Please note: Exceptions will apply only if the group organises such events regularly and on an ongoing basis (e.g. weekly). However, even in these cases no VAT would arise if the revenues in the preceding year were less than €22,000 and, in the current year, were not expected to exceed €50,000.

Consumer protection - Button for online cancellation must be easily recognisable

Even though it is understandable that companies usually want to hold on to their customers for as long as possible, nevertheless, the principle that applies is that online cancellation has to be user-friendly and accessible. Recently, before the regional court of Munich, a pay TV service provider was told that a cancellation option that is complicated in its application is unlawful.

The case in question concerned a website for drawing on pay TV services. Here it was possible to conclude the appropriate agreements online and also to cancel them again. However, the respective cancellation button was very well hidden; on the website, at the lower edge of the screen, there was a button labelled 'show other links' and if you clicked on it then 58 links were displayed including one button labelled 'cancel'. A consumer protection association took legal action against this method on the grounds of a breach of legal duties because the cancellation button was not directly and easily accessible for consumers. The association demanded that the company should refrain from using its method.

The judges at the regional court of Munich agreed with this view in their ruling of 16.11.2023 (case reference: 12 O 4127/23). According to Section 312k(2) sentence 2 of the Civil Code (Bundesgesetzbuch, BGB) the cancellation button has to be easily legible and have the heading 'cancel agreements here' or another appropriate and clearly formulated heading. In the case in question, the lack of good legibility resulted from the fact that the point size on the button that was labelled 'cancel' was smaller than the rest of the body copy on the website. Moreover, according to Section 312k(2) sentence 4 BGB, the buttons and the confirmation page have to be available at all times as well as directly and easily accessible. This was however not the case here and, therefore, should this happen again the company could expect heavy fines or, alternatively, even a prison sentence.

AND FINALLY…

“A compromise is only fair, viable and sustainable when both parties are equally unhappy with it.”

Henry Kissinger (27.5.1923 in Fürth – 29.11.2023) was a US-American political scientist and Republican Party politician. Born in Germany and a Nobel Peace Prize laureate, Kissinger decisively helped to shape foreign policy in the USA in the 1970s under the then Presidents Nixon and Ford. His efforts resulted in: the opening of diplomatic relations with China, arms control negotiations between the USA and the Soviet Union, the improvement in relations between Israel and its Arab neighbours as well as the Paris Peace Accords reached with North Vietnam.

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