

Compliance from A to Z

von

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1. Auflage

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Thematische Gliederung:

[Unternehmensrecht](#)



Verlag C.H. Beck München 2014

Verlag C.H. Beck im Internet:

www.beck.de

ISBN 978 3 406 63657 8

to Public Procurement Law can be reviewed before the → Procurement chambers if an eligible Undertaking initiates such a legal review procedure. Above the relevant contract values Contracting Authorities must conduct the tender procedure pursuant to the German Antitrust Act (Sections 97 et seq. GWB) and the legal provisions enacted to detail out the specifics of the tender procedures (VgV, SektVO, VOL/A, VOB/A, VOF). Below the relevant contract values the guidelines under Public Procurement Law are found in the laws of the federal states and their respective budget law.

Public Tender → Tender

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Q

Quid Pro Quo → Corrupt Intent

Quota-sharing Cartel → Market Sharing

R

Rating Agencies Rating Agencies are →Data Controllers that collect (→Collection), process (→Processing) and →Use →Personal Data in their own business interest for the purpose of transferring (→Transfer) the data, in order to assess the financial circumstances or personal affairs of a data subject.

RDPAC Code Code of Practice on the →Promotion of Pharmaceutical Products (2010 Revision), which becomes effective on January 1, 2011, is enacted by R & D-based Pharmaceutical Association Committee (“RDPAC”) under the China Association of Enterprises with Foreign Investment (“CAEFI”). RDPAC has 37 Member Companies, such as Abbott, AstraZeneca, Merck Serono, Pfizer, GE Healthcare, etc. The Code is binding for every RDPAC Member Company, including its →Employees and →Agents acting on behalf on the member company (e.g. →Consultants, contracted sales representatives, PR agents). The Code covers the Promotion to healthcare professionals of prescription-only pharmaceutical products.

Recipient¹⁸¹ A Recipient for the purposes of the →Federal Data Protection Act is a person or body who receives data (Section 3 para. 8 →FDPA).

Resale Price Maintenance refers to restrictions imposed on a seller’s freedom to set its resale prices in →Vertical Agreements. Whereas pure price recommendations which are not binding, are normally legitimate. European antitrust law generally prohibits the setting of minimum and fixed resale prices. The setting of maximum resale prices may be permissible under certain circumstances (‘→VABER’). In US antitrust law, Resale Price Maintenance is subject to a →Rule of Reason analysis.

Red Flag →Early Warning Indicator

¹⁸¹ European Union/Germany.

Re-export

Re-export Re-export (*Wiederausfuhr*) means the → Export of an item from a country into which the item has been imported before (as opposed to having been manufactured in such country). Contrary to the US, Germany has not adopted legislation which expressly regulates Re-exports. Thus, there is no general requirement to obtain re-export licenses for controlled items which have been exported under an → Export License from Germany. However, the forms for → End Use Declarations prescribed by → BAFA contain a clause which provides that the consignee undertakes to request permission from BAFA before re-exporting the items received under a German Export License. Thus, some form of controls also exists for Re-exports of items after they have been exported from Germany.

Register Duties In many jurisdictions sole trader, partnerships and corporations are bound to apply for registration of certain legal or economic circumstances in a commercial register. Information about object of the company, capital, board members/directors most often underlie the registry obligation. The registered information is available to the public. Entries in the commercial register usually enjoy legal confidence.

Registration Data Registration Data are → Personal Data that are particularly necessary for the conclusion, execution or alteration of a contract between a service provider and a user in the area of telecommunications and telemedia.

Regulated Financial Sector The Regulated Financial Sector encompasses those industries where services providers or suppliers have enhanced diligence obligations under anti-money laundering laws to (i) perform → Know Your Customer → Due Diligence on their customers, (ii) conduct, as the case may be, background checks on the legitimacy of transactions or assets, (iii) conduct enhanced Due Diligence and, as the case may be, background checks on → Politically Exposed Persons (PEPs), and (iv) freeze suspected proceeds of crimes which the regulated entities possess, administer or transfer on behalf of their customers and report these proceeds as well as the relevant transactions to the → FIU. In addition, obligations to train staff, devise internal rules and policies and maintain a sufficient number of → Compliance staff apply in many countries. In most jurisdictions with well-developed anti-money laundering regulation, the Regulated Financial Sector includes banks, money transmitters, asset managers, → Securities dealers, insurance providers, casinos, etc., the driving criterion often being accepting, administering, investing or transmitting money or

fungible → Financial Instruments etc. belonging to others. In addition, real estate agents and real estate dealers as well as retailers in precious stones and precious metals are sometimes included in the Regulated Financial Sector, too. Normally, enhanced anti-money laundering diligence duties do not apply to all of these entities' business but only to those transactions falling within the ambit of the regulation (e. g. no such duties apply if a bank buys office supplies). Regulators as a rule publish relevant guidelines allowing the regulated businesses to establish which activities fall within the regulated ambit, and which don't. Where enhanced diligence-duties apply, they are risk-based in most relevant jurisdictions.

Related Parties¹⁸² The definition of Related Parties is subject to the legislation of the individual legislator. In Germany Related Parties are defined in the → FTA. Under German tax law, a party is a Related Party to a taxpayer where (i) the party holds a direct or indirect ownership interest in the taxpayer of one fourth or more (a substantial ownership interest) or is able to exert direct or indirect control over the taxpayer, or conversely, the taxpayer holds a substantial ownership interest in the party in question or is able to exert direct or indirect control over this party, or (ii) a third party holds a substantial ownership interest in both the party in question and the taxpayer or is able to exert direct or indirect control over both, or (iii) when agreeing on the terms and conditions of a business relationship, the party in question, or the taxpayer, is able to exert influence extraneous to the business relationship on the taxpayer, or on the party in question; or either of them has an interest of its own in the generation of income by the other.

Release from Duty to Work/Garden Leave The Release from the Duty to Work describes the dispensing of the → Employee from having to perform his contractual duty to work during the ongoing employment relationship. The release can be implemented either unilaterally by the → Employer (disputed) or by mutual agreement. The release can be revocable or irrevocable. In case of a unilateral release, the Employee remains entitled to the full contractual compensation. Releases from the duty to work typically occur for the duration of the → Notice Period, i. e. after either party has given notice of termination. The term → "Garden Leave" is a synonym for the term "Release from the Duty to Work".

¹⁸² Germany.

Relevant market The definition of the relevant product and geographic market is the basis for every assessment of competitive behavior in antitrust law. Under European antitrust law, the relevant product market is determined based on the concept of → Supply-side and → Demand-side Substitutability. The relevant geographic market encompasses the area in which the → Undertakings concerned offer the relevant products or services, in which the conditions for competition are sufficiently homogenous, and which can be distinguished from neighboring areas by appreciably different conditions of competition.

Reliability An → Undertaking that wants to participate in a → Public Tender procedure is deemed reliable if that Undertaking is found to promise a timely and appropriate execution of the public contract. That includes adherence to the relevant laws and regulations as well as fulfilling any warranty claims. In each case the relevant specificities of the subject matter of the contract must be taken into account, which includes awareness of the common practices in the relevant industry. Circumstances that might indicate a lack of reliability include, for example, → Severe Misconducts and inappropriate execution of past contracts.

Reliability (of an Exporter) An → Exporter can only obtain → Export and → Transfer Licenses if the Exporter as well as its → Export Control Officer is reliable. This means that the Exporter must comply with all requirements under Export Control legislation (including customs legislation), and that it can be expected that the Exporter will continue to comply with such legislation in the future. In Germany, if an Exporter has violated applicable Export Control legislation in a significant way, → BAFA may refuse to issue further → Export Licenses, and may revoke or suspend existing Export Licenses until the Exporter has implemented measures that ensure compliance with Export Control requirements in the future. If the Export Control Officer was responsible for or involved in such violations, BAFA may require that the Export Control Officer be substituted, and may even require that the (former) Export Control Officer leaves management of the company concerned altogether.

Remote Maintenance¹⁸³ “Remote Maintenance”, as an IT law term, describes a way of providing support for hardware and software. A Remote Maintenance program enables a technician who is not physically present to

¹⁸³ Germany.

access the computer which needs attention over the internet. Remote Maintenance requires special security precautions – usually the access is done through a Virtual Private Network (VPN), an especially secure connection. Under German law, Remote Maintenance is normally qualified as → Data Processing and requires a corresponding → Data Processing Agreement.

Reporting and Disclosure Requirement National capital market regulations usually contain various reporting and disclosure obligations. Their purpose is to establish a high standard of → Transparency in the capital market (i. e. protect the capital market participants from misleading information, reveal information). Issuers are usually bound to publish → Inside Information. According to German law shareholders are held to report if they reach, exceed or fall below certain notification thresholds of voting rights with the object to inform the capital market of possible change of control processes in companies.

Reprehension A Reprehension is an informal reprimand with the purpose of influencing the → Employees' conduct. In contrast to a formal warning (→ Warning, formal) a Reprehension does not include a threat of more severe sanctions in case of repeated misconduct. A Reprehension is the softest response to misconduct and has only little legal impact. Therefore, it is rarely found in practice.

Reputational Risk A Reputational Risk describes the risk posed by the possibility that the public opinion regarding a company or organization is negatively influenced by a specific event, business practice or business relationship. Considering Reputational Risks has become more and more important for → Compliance Officers, but due to its ambiguous nature, they are quite difficult to measure and manage.

Request for Information (antitrust law)¹⁸⁴ The → European Commission is authorized to request the necessary information from → Undertakings in case of a suspected → Cartel. If a formal information request or decision is issued, the requested information must be given and a non-disclosure or late disclosure is subject to a fine. Incorrect or misleading information may be prosecuted at all times. → Privilege against Self-incrimination.

¹⁸⁴ European Union.

Restriction of Competition

Restriction of Competition¹⁸⁵ A Restriction of Competition is normally found under European antitrust law when the decision-making freedom of → Undertakings is restricted either by way of obligations contained in an → Agreement which determine the market conduct of a party, or by influencing market conduct of an Undertaking causing a change in its incentives. Where a cooperation is objectively necessary to allow for a certain product/service offering, such cooperation does not give rise to a Restriction of Competition unless it could have been made with less stringent restrictions.

Restriction of Competition by Effect¹⁸⁶ Agreements which have as their effect an appreciable restriction of actual or → Potential Competition on prices, output, product quality or variety or innovation are prohibited under European antitrust law. → Restriction of Competition by Object; → Appreciable Effect

Restriction of Competition by Object¹⁸⁷ Restrictions of Competition by Object are those that by their very nature have the potential to restrict competition. → Hardcore Restrictions generally qualify as restrictions by object. Under European antitrust law, restrictions by object are prohibited without the need to examine the actual or potential effects of the → Agreement on the market. → Per Se Agreements; → Restriction of Competition by Effect

Revolving Door Metaphorical concept which describes an individual's moving back and forth between public and private entities in order to abuse her/his power for the benefit of the private entity.

RFP (Edital)¹⁸⁸ RFP (Request for Proposal) is the instrument by which government entities establish the characteristics of the services or products they wish to acquire and the terms and conditions of the purchase. The → Brazilian Public Procurement Law (Law 8,666/1993), in its Article 40, provides for all the information an RFP must bring, such as (i) the purpose of the → Public Tender, (ii) payment conditions, (iii) criteria for the judgment of the proposals, among others.

¹⁸⁵ European Union.

¹⁸⁶ European Union.

¹⁸⁷ European Union.

¹⁸⁸ Brazil.