German Corporate Law 2022 – At the Cross-Roads of Continued Globalization and Keeping Your Own House in Order

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The following summary highlights selected legislative changes and recent court cases in the general corporate sphere which we deem of specific future interest for the transactional business in Germany and the M&A market at large in the year 2022 and beyond.

While German corporate legislative activities in 2020 were, at least partly, characterized by short-term responses to the COVID-19 pandemic, the major corporate reform in 2021 (i.e. the Act on the Modernization of the Law on Partnerships (Gesetz zur Modernisierung des Personengesellschaftsrechts, MoPeG) discussed below in section 3) and Germany's continued and robust drive for more beneficial ownership transparency of corporate structures (see section 5 below), but also the German Federal Supreme Court's (Bundesgerichtshof, BGH) decision on the future qualification of English limited liability companies under German law following the completion of Brexit (see below section 4), reinforce traditional dogmatic choices and existing German preferences in favor of public registers also for the longer-term future and in an international context.

At the same time, the international competition between national legal orders remains vibrant. The German legislature appears recognizant of the resulting need for continued globalization whilst safeguarding typical German core values: Both the continued expansion of the catalogue categories of the German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung, AWV) discussed in section 1 and the German Business Stabilization and Restructuring Act (Unternehmensstabilisierungs- und -restrukturierungsgesetz, StaRuG) introduced with effect as of January 1, 2021 (see section 2) can be seen as reactions to continued globalization, but also as attempts to serve and protect national interests.

We will round off our selected summary of noteworthy German-law changes and initiatives with another key area of expected future change, the area of ESG (environmental, social, governance, see section 6). In particular with the Green Party (Bündnis 90/Die Grünen) featuring as one of the junior partners in the newly elected German government coalition, it can be expected that this area will be a focal point of legislative and social reforms that will also affect the way business and, thus, M&A will be done in the future.

Certain of these changes will affect M&A activity and how transactions are structured in the future more immediately than others: While the need to consider a potential foreign direct investment ("FDI") clearance by the German Ministry for Economic Affairs (BMWi) is quickly turning into a second standard pillar of regulatory work besides the traditional anti-trust review, the impact of ESG considerations on transactional due diligence reviews is only just starting to be felt in certain limited M&A transactions.

Similarly, the need to disclose the ultimate beneficial owner in the German transparency register will likely not shape how M&A transactions are done, but nevertheless indirectly influences soft factors of the general investment climate. The impact of certain other of the above discussed corporate headline changes for 2022 will probably also be felt mostly by similar indirect reflex.

1. Further Revision of the German Foreign Direct Investment Law – A New Standard Step in the M&A Repertoire?

The expansion of the scope of the German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung, AWV) in the context of foreign direct investments ("FDI"), which we already highlighted in 2020 as maybe the most significant legal development with direct consequences for the entire M&A community, has continued in 2021 and, if anything, has gathered further momentum.

In May 2021,[1] the German legislator added 16 new business sectors into the cross-sectoral review that are considered critical. In addition to the sectors already included in the AWV, a mandatory filing is now also re-

1 "Germany Further Strengthens Foreign Direct Investment (FDI) Regime", available under https://www.gibsondunn.com/germany-further-strengthens-foreign-direct-investment-fdi-regime/.

quired if a German M&A transaction target operates in one of these new sectors and the investor intends to acquire more than 20% (compared to 10% applicable to the "old" sectors) of its voting rights. These newly introduced sectors include satellite systems, artificial intelligence, robots, autonomous driving/unmanned aircrafts, quantum mechanics, and critical materials and broadly reflects the sectors mentioned in the EU Screening Regulation.[2] The total number of „critical sectors" which require a mandatory filing has now increased to 27.

The revision also extended the sector-specific review (in particular with respect to defense-related activities). This is relevant to all non-German investors, even if they are located in the EU/EFTA. The following are now included: (i) all products of Part I Section A of the German Export List including their modification and handling, (ii) military goods/technologies that are based on restricted patents or utility models and (iii) defense-critical facilities.

In addition to expanding the scope of the FDI review, the 2021 revisions of the AWV led to certain procedural changes and clarifications, including the following:

- Additional mandatory filings are required, if the investor acquires additional voting rights and exceeds certain thresholds (e.g., 25%, 40%, 50% and 75%, in case of the initial threshold of 20% or 20%, 25%, 40%, 50% and 75% in case of the initial threshold of 10%).

- The application for a certificate of non-objection (Unbedenklichkeitsbescheinigung) is not available if the transaction is subject to mandatory filing requirements.

- The German Ministry for Economic Affairs (BMWi) may review transactions falling below the relevant voting rights threshold, if so-called atypical control rights are granted to the investor (e.g. granting the investor an additional board seat or veto rights and/or access to particular information). This, however, does not trigger a mandatory filing requirement but allows the BMWi to investigate the transaction ex officio for up to five years post-signing.

- Individual investors may be considered as acting together in certain acquisition structures involving purchasers from the same country.

Since April 2020, the German FDI regime faced three substantial revisions,[3] which led to a significant increase in case load for the BMWi. Many EU Member States have implemented or amended their FDI regimes in light of the EU Screening Regulation and the EU cooperation mechanism. This has led to a solid information flow between the European Commission and the EU Member States. Investors are therefore well-advised to conduct a multi-jurisdictional FDI analysis as early as possible in the M&A process. The increased breadth of the catalogue categories, and the risk of potentially severe, legal consequences for gun jumping (including imprisonment) in connection with the prohibition to complete a transaction if a clearance is required (Vollzugsverbot) will mean that a high number of transactions will henceforth either require a mandatory filing or, even if they do not in the view of the parties involved, for reasons of legal certainty, an application for a certificate of non-objection will nevertheless be deemed to be the safest approach. As a consequence, in international transactions involving German target entities, German FDI filings and their coordination with similar foreign parallel filings has become part of the standard repertoire in M&A circles similar to the antitrust assessment that is routinely performed.

2. Pre-Insolvency Restructuring – The First Twelve Months and What Next?

Exactly a year ago, the German Business Stabilization and Restructuring Act (Unternehmensstabilisierungs- und -restrukturierungsgesetz, StaRuG, the **"Restructuring Act"**) was introduced with effect as of January 1, 2021.[4]

Since restructuring proceedings under the Restructuring Act are in general non-public, official statistics on the number of proceedings applied for or completed are not available. However, publicly available sources suggest that (i) around ten applications were made in the first eight months of the year 2021, (ii) no large multinational company was involved and (iii) most of the companies concerned were local entities rather than international players.

In addition, there already is a somewhat limited body of court orders related to the Restructuring Act. These early cases hint at two critical aspects of any German

2 EU Regulation (EU) 2019/452 of March 19, 2019 establishing a framework for screening of foreign direct investments into the EU, available in the English language version under: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452&from=EN.

3 Gibson Dunn accompanied several of these successive changes by publishing corresponding client updates at the time. If of historic interest, see (a) on November 11, 2020 the "Update on German Foreign Investment Control: New EU Cooperation Mechanism & Overview of Recent Changes", available under https://www.gibsondunn.com/update-on-german-foreign-investment-control-new-eu-cooperation-mechanism-and-overview-of-recent-changes/ and (b) on May 27, 2020, available under https://www.gibsondunn.com/german-foreign-investment-control-tightens-further/.

4 See last year's high-level summary in "Introduction of a New Pre-Insolvency Restructuring Tool Kit", available under section 2.3 of https://www.gibsondunn.com/2020-year-end-german-law-update/.

pre-insolvency restructuring:

- Several cases have honed in on the determination of impending illiquidity (drohende Zahlungsunfähigkeit). This key determination works in two ways, namely to prevent premature attempts to make use of the pre-insolvency restructuring regime even though the required liquidity shortfall is not satisfied to meet the threshold of impending illiquidity. On the other hand, courts have had to deal with cases at the other end of the spectrum when actual illiquidity (Zahlungsunfähigkeit) either existed (and full insolvency proceedings would have to be applied for under mandatory law) or such actual illiquidity later occurred while proceedings under the Restructuring Act were pending (when the continuation of lawfully commenced pre-insolvency restructuring remains the exception).

- A second focal point in the early cases available seems to be the comparative calculation (Vergleichsrechnung) where opposing creditors can show that the restructuring plan disadvantages them when compared to hypothetical alternative scenarios. In this context, the courts are grappling with the question of how to pick the appropriate hypothetical comparator ranging from third-party sale options or other forms of business continuation to full liquidation in formal insolvency proceedings which have to be provided by the debtor in support of an envisaged cross-class cramdown.

It is still too early for a conclusive evaluation of the Restructuring Act, of course, but restructuring professionals have made the following interim observations after one year of experience with the new law:

- Financing banks seem concerned about the risk of being overruled by other creditors in restructuring proceedings and are looking for additional safeguards to protect their interests. At the same time, affected companies urgently need reliable (bank) financing also during pre-insolvency restructuring.

- The shift of fiduciary duties of management to primarily safeguard the interests of creditors (rather than shareholders) should already apply when a debtor reaches a state of impending illiquidity to allow for an early restructuring without obstruction from shareholders.

- The last minute deletion in the legislative process of the option to terminate contracts which are obstacles to a successful pre-insolvency restructuring from the toolkit under the Restructuring Act considerably weakens and limits the scope of application of German restructuring proceedings, in particular in the international competition between other EU, English and US restructuring laws.

All of the above concerns would require certain amendments to the Restructuring Act. The coalition agreement of the newly elected German government between the Social Democratic Party (SPD), the Green Party (Bündnis 90/Die Grünen) and the Liberal Democratic Party (FDP) has not placed particular emphasis on restructuring and a cross-party consensus may not be easy to achieve. Having said that, the general goal of "modernizing" Germany would, of course, be sufficiently wide to allow for a prompt response through governmental initiatives or parliamentary discussion if serious frictions became apparent in the continued application of the Restructuring Act.

For interested M&A circles, the Restructuring Act and the proceedings performed thereunder are of manifest interest, in particular for investors in the area of distressed M&A. This is, on the one hand, borne out by the emphasis the courts have placed on such sale scenarios as alternative feature in their comparative calculation. On the other hand, the fact that asset deals if provided for in a restructuring plan are, to a certain extent and subject to additional requirements, privileged and exempt from avoidance in case of a later insolvency, can be an attractive feature for investors.

3. Recent Reform of the Legal Framework for Civil Law Partnerships and other Commercial Partnerships

On June 25, 2021, the German legislator adopted the Act on the Modernization of the Law on Partnerships (Gesetz zur Modernisierung des Personengesellschaftsrechts – MoPeG). While the new law will only enter into force on January 1, 2024, this reform will result in a number of changes which civil law partnerships (Gesellschaft Bürgerlichen Rechts, GbR – "Civil Partnership") and their partners, but also other forms of commercial partnerships and their partners, ought to be aware of in order to be prepared for the new legal regime.

Below we highlight a number of selected changes of particular interest for general M&A players but also for real estate investors who often choose to operate via partnership structures in Germany:

3.1 Registration of Civil Partnerships

Under the new law, Civil Partnerships will have the option and in some cases the need to seek registration in a newly introduced company register (Gesellschaftsregister) maintained by the local courts (Amtsgerichte). Such registration in the public commercial register (Handelsregister) is already mandatory for both (i) corporations such as the GmbH (private limited liability company) or the AG (stock

corporation), as well as (ii) commercial partnerships such as the OHG (commercial open partnership with only personally liable partners) or the KG (limited partnership).

This new company register will be particularly relevant for Civil Partnerships that own real estate because their registration in the new company register will be mandatory after January 1, 2024, the current grace period, as soon as there are any legal changes triggering registration in any of the existing registers (e.g. encumbrances or changes in real estate ownership in the land register (Grundbuch)).

Newly incorporated Civil Partnerships who acquire real estate will always require registration in the new company register after the entry into force of the MoPeG based on the above rationale.

Similarly, the position of a Civil Partnership as a shareholder of a limited liability company or as a named shareholder (Namensaktionär) in a stock corporation will trigger the need for registration in the new company register for the Civil Partnership.

If registered, Civil Partnerships must use the abbreviation "eGbR" (eingetragene Gesellschaft bürgerlichen Rechts – Registered Civil Partnership) in their firm name. The registration in the new company register will also increase the level of information available to the public on such registered Civil Partnerships significantly: The filing for registration will have to contain full personal or corporate details of all partners, the details of their representation powers and a confirmation that the relevant partnership is not yet registered in the commercial register or the partnership register (Partnerschaftsregister).

In particular in real estate transactions, where the use of Civil Partnerships is relatively common, such increased transparency on the particulars of the partners and their representation powers will be welcome.

Finally, the registration of a Civil Partnership in the new company register will also result in the need for its partners to disclose information on the registered Civil Partnership's ultimate beneficial owners in or to the German transparency register (Transparenzregister).

3.2 Confirmation of Continuity of the Seat of Partnership

The MoPeG brought another welcome and long overdue clarification: The new law clarifies that all German partnerships have their corporate seat either at the place where their business is actually conducted (Verwaltungssitz) or – in case of both registered Civil Law Partnerships and commercial partnerships – at a contractually fixed place in Germany (Vertragssitz), irrespective of the place where the relevant partnership's business is actually conducted.

Due to the specifics of German partnership law, there had always been some doubt over whether commercial partnerships, which are registered as such in the existing German commercial register, might lose their status as German commercial partnerships (and thus potentially their liability limitations) if they are managed entirely from abroad because they are deemed to no longer be German-based.

This statutory confirmation of the continuity of a partnership's chosen seat means that this dogmatic discussion is now settled. German corporate law remains applicable to partnerships for as long as their chosen contractual seat remains in Germany, irrespective of the factual place where managerial decisions are taken. Consequently, limited partnerships with foreign partners or managed from abroad no longer have to fear that such foreign management may invalidate or otherwise question their limitation of liability under German law. Going forward, the German partnerships concerned are thus free to operate predominantly or entirely abroad.

3.3 Qualification under the German Conversion Act (Umwandlungsgesetz, UmwG)

The reform also clarifies that Civil Partnerships can in the future be transformed into other corporate formats or merged into other entities by way of universal legal succession. One requirement for such conversion will, however, be a prior registration of the Civil Partnership in question in the new company register.

3.4 Key Changes for Commercial Partnerships

The reform also introduces certain changes that apply to commercial open partnerships or limited partnerships in Germany. Chief among them are increased information rights for limited partners, new rules on the determination and distribution of profits to the partners and provisions on the taking of partner resolutions and the consequences of defective partner resolutions.

3.5 Outlook

Existing Civil Partnerships should familiarize themselves with the reform with a view to (i) identifying any necessary or opportune amendments to their partnership agreements and (ii) potential issues related to a future registration in the respective company register. They should assess whether their business activities are of a nature that makes registration either opportune or legally required.

The changes to the law for commercial partnerships may, at first sight, appear less fundamental or far-reaching. Nevertheless, the interim period until December 31, 2023 should also be used to ascertain to which extent existing partnership agreements may need to be revised to either reflect some or all of these changes or to opt out of the new law that might otherwise apply.

While Civil Partnerships have rarely featured in German M&A transactions, in general, civil and commercial partnerships are, by rule of thumb, mainly used either in real estate investment transactions or as holding entities for tax transparency reasons. In this context, especially the long-overdue confirmation of the continued existence of limited partnerships as German-law entities in the form as incorporated even if they are managed from abroad (see section 3.2) and the increased transparency regarding representation powers in Civil Partnerships (see section 3.1) are probably the most welcome and widely relevant changes for the M&A community brought about by the MoPeG.

4. Did Brexit Spell the End for English Limited Companies in Germany?

Once the United Kingdom opted to leave the European Union, the continued existence and legal qualification of English private limited companies with an administrative seat in Germany became the subject of intense legal speculation and debate: Would German courts continue to afford English companies the protection of the EU Company Law Directive[5] (the "Company Law Directive") and the freedom of establishment (Art. 49, 54 AUEV) or would they default back to the "corporate domicile theory" (Sitztheorie) for English companies in the way they do for other non-EU companies that are not governed by relevant bilateral treaties?

On February 16, 2021, the German Federal Supreme Court (Bundesgerichtshof, BGH) ruled on the above question for the first time and held that the Company Law Directive and the freedom of establishment will no longer apply to an English limited company as a result of Brexit.[6] The BGH's judgement suggests that the court will continue to apply the traditional German corporate domicile theory (Sitzheorie) to non-Member States and that it now considers the United Kingdom a non-Member State. Accordingly, the choice of the applicable company law for companies from a non-Member State depends, from a German law perspective, on the administrative seat of the company. In other words, German law will apply to English companies with a German administrative seat.

It then follows that English companies with a German administrative seat would, due to their lack of compliance with the incorporation formalities applicable to German corporations, regularly be reclassified either as a German civil law partnership (GbR) or as a commercial open partnership when operating a commercial enterprise (OHG): The partners in both of these partnerships are generally faced with unlimited personal liability. The resulting risks arising from such a corporate reclassification for the owners of English limited companies which operate out of Germany are obvious.

English limited companies with elements of their decision making powers or administrative headquarters in Germany are thus well advised to restructure their company to avoid personal liability risks for the limited company's shareholders. The required measures may include (i) a transfer of the effective administrative seat to the United Kingdom, (ii) the transfer of the business operations of the English Limited to another new or existing German limited liability company (i.e. GmbH) or a German entrepreneurial company with limited liability (UG haftungsbeschränkt) by way of asset deal or (iii) under certain specific circumstances, a cross-border merger of the relevant English Limited into a limited liability company of one of the other EU Member States.

Which one of the above options is the most suitable approach for any given company must be thoroughly considered in each case and will also depend on tax considerations and/or the business area the respective company trades in.

5. Transparency Register: Expiry of Transition Periods for Registration of Beneficial Ownership Information

Effective as of August 1, 2021, the German transparency register, which was introduced in 2017 as part of EU measures to combat money laundering and terrorist financing, has finally been upgraded to a genuine public register for information on a beneficial owner.[7] A beneficial owner is an individual (natürliche Person) who directly or indirectly owns or controls more than 25 per cent of the share capital or voting rights in the relevant entity.

5 Directive (EU) 2017/1132 of the European Parliament and the Council of June 14, 2017 relating to certain aspects of company law, available under OJ EU, L 169, 46 et seq. and under: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1132.

6 Case number II ZB 25/17, available under: http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&az=II%20ZB%2025/17&nr=115411.

7 For a more detailed analysis we refer to Gibson Dunn's more specific client update "German Transparency Register on Beneficial Ownership: New Filing Requirements for German Corporations and Foreign Entities Directly or Indirectly Acquiring German Real Estate", published in June 2021 and available under: https://www.gibsondunn.com/german-transparency-register-on-beneficial-ownership-new-filing-requirements-for-german-and-foreign-corporations-acquiring-german-real-estate/.

Previously it was not a requirement to file beneficial ownership information with the German transparency register if the information was already available in electronic form in other public German registers – for example through shareholder lists retrievable from the commercial register (Handelsregister) or because the registered managing directors of the German subsidiary were deemed to be beneficial owners absent individuals controlling the parent. Now all legal entities (juristische Personen) and registered partnerships under German private law are required to file beneficial ownership information for registration with the German transparency register. If there is no ultimate beneficial owner, the legal representatives, managing shareholders or partners must be registered with the German transparency register as deemed beneficial owners irrespective of their registration in another German public register.

The (staggered) transition periods for entities that had to file for the first time due to the new rules will expire (i) on March 31, 2022 (for stock corporations (Aktiengesellschaft, AG)), European stock corporations (Societas Europaea, SE) and partnerships limited by shares (Kommanditgesellschaft auf Aktien, KGaA), (ii) June 30, 2022 (for limited liability companies (Gesellschaft mit beschränkter Haftung, GmbH)), cooperatives (Genossenschaften), European cooperatives (europäische Genossenschaften) and partnerships (Partnerschaftsgesellschaften)) and (iii) December 31, 2022 (for all other legal entities and registered partnerships).

Although there is a further leniency period of one year following the aforementioned filing deadlines, in which no administrative fines shall be imposed on the relevant entities, in particular international groups should confirm with their German subsidiaries to ensure a timely filing of the required beneficial ownership information with the transparency register. It is important to bear in mind that the above transition periods do not apply in case the change occurs on or after August 1, 2021. Accordingly, any new managing directors deemed to be beneficial owners should also be registered immediately in the transparency register to avoid an administrative fine.

Finally, in this context it is also important to note that since August 1, 2021, the obligations of foreign entities and trustees residing or headquartered outside of the EU to file beneficial ownership information for registration in the German transparency register have been significantly expanded. In particular, if German real property is involved in a transaction, the rules now not only capture asset deals but also direct and indirect share deals. These new filing obligations should be taken into due consideration by all companies planning to – directly or indirectly – acquire real property in Germany in 2022 in order to avoid any unexpected delays of the transaction due to missing filings.

For interested M&A circles, this will be relevant in various ways: For international investors, the disclosure obligation of their ultimate beneficial in the public transparency register is noteworthy per se. This is coupled with the increased number of advisors (banks, attorneys and now also German notaries) who will have to ask investors for corresponding know your client information packages. As a consequence, the collection and submission of suitable information on the ultimate beneficial owner will increasingly become an early-stage to-do for investors in most if not all M&A transactions.

6. ESG – What's Next? The Delayed EU Initiative on Sustainable Corporate Governance

Sustainability and social responsibility are continuously attracting awareness and gaining in importance.[8] One encounters these issues in a wide variety of areas, from everyday errands such as grocery shopping to complex processes such as corporate governance. In M&A transactions, due diligence on various ESG aspects has also gained traction in recent years as companies and investors increasingly place greater emphasis not just on the financial bottom line but also on softer social or environmental factors that play a significant role in how a business is perceived by the public eye.

In a similar vein, the current legislative initiative on Sustainable Corporate Governance (2020/2137 INI) (the **"Initiative"**) by the European Commission[9] is aimed at ensuring that companies focus on long-term sustainable value creation rather than short-term benefits and would be subject to a broader set of policies under the EU Green Deal.

The Commission was originally set to adopt the Initiative in December 2021. After public consultation was completed in early 2021, and following an initial delay due to the rejection of the underlying impact study by the EU Regulatory Scrutiny Board, pressure has increased on the Commission to act soon. On December 8, 2021, an open letter signed by 47 civil society and trade union organizations was sent to the President of the European Commission, Ursula von der Leyen. Publication of the proposed draft directive is now expected for early 2022.

8 See, for example, Regulation (EU) 2019/2088 of the European Parliament and of the Council of November 27, 2019 on sustainability related disclosures in the financial services sector, OJ L 317, 1 et seq, amended 2020 by L 198, 13 et seq, which is applicable since March 2021 and available online under: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R2088-20200712.

9 Regarding the current status of the initiative, see the corresponding official website of the European Commission under: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en.

According to the inception impact assessment[10] (a project plan setting out the elements for new legislation) by the Commission, the Initiative is expected to impose a combination of the following corporate and directors' duties with a view to requiring (i) companies to adhere to the "do no harm" principle and (ii) directors to integrate a wider range of sustainability interests, such as the climate, environment and human rights, into their business decisions:

- **Due diligence duty:** The due diligence duty for companies operating in the EU would require them to "take measures to address their adverse sustainability impacts, such as climate change, environmental, human rights […] harm in their own operations and in their value chain by identifying and preventing relevant risks and mitigating negative impacts" to identify and prevent relevant risks for climate, environment and human rights; and

- **Duty of care:** This duty for company directors would oblige them to take into account stakeholders' interests "which are relevant for the long-term sustainability of the firm or which belong to those affected by it ([such as] employees, the environment, other stakeholders affected by the business)". Companies' strategies under these requirements would need to be implemented "through proper risk management and impact mitigation procedures".

It remains to be seen how and to what extent the Commission will implement these plans. Especially the suggested duty of care for management was met with criticism from Nordic countries such as Denmark, Finland, Estonia and others.

In Germany, ESG is – at least, to a certain degree – already part of corporate law: Certain disclosure obligations contained in German commercial law, which originated from the EU Corporate Social Responsibility Directive,[11] and the new German Act on Corporate Due Diligence in Supply Chains (Lieferkettensorgfaltspflichtengesetz, LkSG), which will come into effect in 2023, are two such examples. Furthermore, the – non-binding – German Corporate Governance Code (Deutscher Corporate Governance Kodex) covers the issue of sustainability and states that companies have ethical, environmental and social responsibilities for their employees, stakeholders and the community, deviating from the narrow shareholder value towards the broader stakeholder value principle.

The political trends in Germany point towards increased support for an initiative on social corporate governance: the 2021 coalition agreement of the newly elected German government between the Social Democratic Party (SPD), the Green Party (Bündnis 90/Die Grünen) and the Liberal Democratic Party (FDP) has placed strong emphasis on sustainability (the word appears more than 100 times in the 170-page agreement) and the protection of the environment. The document expressly states support for a "Corporate Sustainability Reporting Directive"
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Given the suggested scope of the Initiative, companies and investors alike should be prepared to take seriously not only economic, but also environmental and social responsibility along the entire value chain and implement respective processes throughout their operations. For example, in order to comply with the proposed due diligence duty and the duty of care, companies would likely be required to adapt newly tailored decision-making procedures, taking into account aspects such as sustainable corporate governance, climate protection, resource conservation, data responsibility, human rights, integrity and compliance, supply chain and corporate citizenship. Similar considerations will likely also infuse M&A investment decisions more prominently as one key factor of several.

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10 Inception Impact Assessment of the European Commission, Ref. Ares(2020)4034032 - 30/07/2020, available online under: https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=pi_com%3AAres%282020%294034032.

11 Directive 2014/95/EU of the European Parliament and the Council of October 22, 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ EU, L 330, 1 et seq., available online under: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095.