



WILMER, CUTLER & PICKERING

German Legislation: 2003 Bulletin

MARCH 6, 2003

WHAT'S UP, GERMANY?

A great deal of the proposed German federal legislation this year will impact businesses, their managers and legal advisers alike. Overall, after several recent landslide losses in regional (*Länder*) and municipal elections, the Schröder government will need to revive trust in its capacity to solve some of the urgent economic and social questions. On March 14, the Chancellor is expected to issue a "state of the nation" speech to prioritize major revisions to rigid labor laws and to cut high non-wage costs in Europe's biggest economy. In addition, Schröder is expected to reveal further details of a stimulus package for the German economy. This may include shelving local tax reforms and deferring the contribution local authorities make to flood-rebuilding costs.

Though it is not yet clear as to how and when legislators will implement them, this bulletin should provide an overview of the more developed legislative projects of note.

Ministry of Economics and Labor

The Ministry of Economics and Labor, under Minister Wolfgang Clement, is preparing most of the important legislative projects:

- Liberalization of the **Act on Shopping Hours** (*Ladenschlussgesetz*) has already been agreed. It concerns both businesses and the general public and was broadly discussed over several years. Starting in April 2003, retail businesses will be able to

open on Saturdays from 6:00 a.m. to 8:00 p.m.; however, Sunday will remain a shopping-free day of the week. Hairdressers' restrictions on business hours will be abolished entirely.

- Another important project is the amendment to the **Competition Act** (Act Against Restrictions of Competition - *Gesetz gegen Wettbewerbsbeschränkungen*):
 - In accordance with new EC rules, businesses will no longer notify individual horizontal agreements to the German federal competition authority (*Bundeskartellamt*). Instead, the Authority will limit its control of both vertical and horizontal agreements to cases of abuse.
 - In addition, Minister Clement is considering a plan to narrow the judicial means by which competitors can challenge a merger agreement which has been authorized by the Minister after initially being prohibited by the *Bundeskartellamt* (**Ministererlaubnis**).
- New European legislation demands a swift and fundamental amendment to the **Telecommunications Act of 1996** (*Telekommunikationsgesetz*). The new Telecommunications Act will need to reflect the ongoing liberalization process and the

WILMER, CUTLER & PICKERING

latest advancements in technology. The first working draft legislation has just recently been forwarded to a restricted number of experts. According to this draft, the current approach of sector-specific regulation seems to remain in place. However, the working draft suggests major structural changes that need to be assessed carefully. It remains to be seen if the new legislation will nonetheless ease legal regulations still imposed on the business conduct of *Deutsche Telekom*. This reform is expected to become one of the most controversial pieces of legislation in 2003/2004.

- After the national and international scandals in the accountancy profession in recent years, the Ministry plans to amend the legal rules governing the profession in order to **control accountancy activities more closely**.
- The **Act on the Observance of Agreed Wages** (*Tariftrueugesetz*) will require all public authorities to insist that businesses tendering for public local traffic and construction contracts abide by collective labor agreements.
- Further, the intended creation of a **Corruption Register** (*Korruptionsregister*) will enable public authorities to exclude unreliable undertakings from publicly commissioned projects.
- The amendment to the **Energy Industry Act** (*Energiewirtschaftsgesetz*) is meant to stimulate further competition in the electricity and gas market.
- Concerning **labor law**, the Ministry is continuing its efforts to reform labor market legislation by further implementing the Hartz-Commission suggestions. Most importantly, this includes the development of legislation concerning low-income “Mini-Jobs” by April 1, 2003 as well as the interlocking of unemployment assistance and social security by the end of 2004.

Ministry of the Interior

The only significant legislative project presented by Minister Otto Schily to the Federal Parliament (*Bundestag*), so far, has been the Immigration Regulation. Last year it was annulled by the Federal Constitutional Court on grounds of formal errors and is now being reintroduced without further amendments. The **Immigration Regulation** has been highly controversial from the start. With the opposition parties gaining ground in the second German legislative chamber, the *Bundesrat*, the government will need to reconsider major parts of their proposal.

Ministry of Justice

The Ministry of Justice under Minister Brigitte Zypries is also working on diverse and controversial reforms.

- Much attention is being given to the reform of the **Unfair Competition Act** (*Gesetz gegen den unlauteren Wettbewerb*). Its principal aim is the strengthening of consumer protection by prohibiting misleading advertising and fictitious reductions of inflated prices. Introduced are plans to confiscate profits derived from such unfair business actions. At the same time, restrictions on businesses will be lifted to allow discount actions, such as close-out sales, the whole year round.
- The forthcoming **Anti-Discrimination Act** (*Antidiskriminierungsgesetz*) is based on a European directive. Its particular importance lies in the extension of anti-discrimination measures to the legal relations of private parties. The law will allow for indemnification claims, mainly for racial or ethnic discrimination. Still controversial is the inclusion of claims for discrimination on the grounds of sexual orientation and religion.
- Another EU-directive that must be implemented deals with **Copyright in the Information Society** and intends to adapt the relevant legislation to new digital technology requirements. Thus, the law intends to penalize the circumvention of technological

measures used to protect copyrighted works, as well as the tampering with the integrity of copyright management information. At the same time, it contains limitations and exceptions such as the use of a work without the explicit consent of the author.

- The Minister also intends to push legislation concerning the conduct of boards of directors on the basis of recommendations made by the **Corporate Governance Commission**. Mainly, the requirements for bringing a liability suit by small investors will be reduced.

Ministry of Finance

Finance Minister Hans Eichel is looking to complete many legislative projects with the goal of improving the State's budgetary situation. His most important mission, so far, is the containment of new debts. The assessed deficit of 18.9 billion euro shall be maintained under all circumstances to meet the requirements of the European Stability and Growth Pact and to avoid a fine from Brussels in case of a repeated excessive deficit. However, recent drops in public support seem to lure the government into a less stringent approach on debts. Now, leading social democrats openly advocate the switch to increased public spending on a stimulus package to foster economic growth.

- The most important fiscal measure, the **Act on the Reduction of Tax Privileges** (*Steuervergünstigungsabbaugesetz*), intends to bring an additional revenue of at least 17 billion euro per year. The bill introduced faces strong resistance from the opposition and is likely to be amended considerably in the Federal Council (*Bundesrat*).
- The **Budget** for the current year is planned to be passed in March. Additional laws concerning the budget for next year and medium-term fiscal planning from 2003 to 2007 are scheduled for June. Eichel will have to show how he plans to avoid new debts in 2006, despite negative economic growth prospects.
- In addition, the **Act on the Promotion of**

Setting up Businesses and of Small-Scale Enterprises (*Gesetz zur Förderung von Existenzgründern und Kleinstunternehmen*) will lead to an expected revenue loss of 250 million euro, but at the same time is meant to stimulate new employment and economic growth. This will be achieved by radically simplifying taxation: half of the income will be deemed as blanket costs.

- On the other hand, the Minister expects added fiscal revenues from the **Act on the Taxation of Monetary Gains and on the Repatriation of Capital Transferred Abroad** (*Gesetz zur Besteuerung von Kapitaleinkünften und zur Rückführung von ins Ausland gebrachten Vermögen*). This means that taxes on accrued interests will not rise above 25%, independent of the income tax rate of the individual recipient.
- Finally, two commissions were formed: one on the **Taxation of Retirement Pensions** (*Besteuerung von Alterseinkünften*), required by the Federal Constitutional Court and probably costing the State some 15 billion euro, and the other on the Reform of Municipal Financing (*Gemeindefinanzreform*), which will either reinstate the business tax or let communities benefit from income tax and corporate income tax.

Ministry of Consumer Protection, Food and Agriculture

Minister Renate Künast's legislative agenda focuses primarily on consumer protection.

- The rejected and now reintroduced **Act on Consumer Information** (*Verbraucherinformationsgesetz*) is aimed at enabling public authorities to inform and warn the public about health risks, even where there are no imminently dangerous situations, and at giving consumers the right to information on products and services from all industries.
- Finally, the new EC-law based **Gene Technology Act** (*Gentechnikgesetz*), which

should have been implemented by October 17, 2002, will regulate the control of genetically modified plants and introduce a register of relevant growing areas.

Ministry of Defense

- Defense Minister Wolfgang Struck remains busy with reforming the **Bundeswehr** to meet the new requirements of an army moving away from the task of national defense.

Ministry of Health and Social Security

- The core activity of Minister Ulla Schmidt is the reform of the **Public Health Insurance System** (*Gesetzliche Krankenversicherung*) by January 1, 2004 (*inter alia*: liberalization of the market for pharmaceutical products and of the relationship between individual doctors and health insurance companies, and improved cooperation between outpatient and hospital care).

Ministry for the Environment, Nature Conservation and Nuclear Safety

Minister Jürgen Trittin envisions two major reforms this year:

- His first project is the controversial amendment to the **Regulation on Packaging** (*Verpackungsverordnung*). It is intended to clarify the current legal obscurities concern-

ing compulsory can deposits and its practical implementation through a collective system. It will also do away with paradoxical provisions and require a deposit depending on the packaging, not the content. It remains to be seen how the Federal Council (*Bundesrat*) will welcome the new rules after having rejected the amendment last year.

- The second task stems from the **Renewable Energy Sources Act** (*Erneuerbare-Energien-Gesetz*). It requires the regular revision of the payment rates for energy coming from wind power, solar power and biomass to prevent payments that are either too low or too high. Although all political parties agree upon the necessity to increase the quota of renewable energy, discussion remains on the speed of its increase and the amount of subsidy required.

If you would like further information, please contact:

Matthias Wissmann +49 (30) 2022-6426
(Matthias.Wissmann@wilmer.com)

Natalie Lübben +49 (30) 2022-6411
(Natalie.Luebben@wilmer.com)

Martin Seyfarth +49 (30) 2022-6430
(Martin.Seyfarth@wilmer.com)

Jörg Karenfort +49 (30) 2022-6430
(Joerg.Karenfort@wilmer.com)