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# Hospitality and Compliance – The Need for a Political Solution

Flavio Bertoli

Syndikus, Siemens AG

Member of the Legal Working Group of S20 – The Sponsors' Voice

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## Hospitality and Compliance

### ► Compliance

- The notions of “hospitality” and “compliance” have become “Siamese twins” in recent public discussions.
- In general, “compliance” means conforming to a specification or policy, standard or law that has been clearly defined.
- In the context of „hospitality“, „compliance“ also refers to all reasonable measures aimed at ensuring that a company and its employees observe all applicable laws and regulations, external as well as internal, when inviting guests to an entertainment event.

## Hospitality and Compliance

### ► Issue

- Increasing prices for „VIP packages“ at major sports events;
- Increased focus on the topic of hospitality and compliance fueled by economic downturn and social envy („Neiddebatte“);
- Perceived friction between „hospitality“ as means of corporate communication and as a business tool on the one hand, and the goals of anti-corruption laws and regulations on the other.
- An invitation to an entertainment event may constitute a relevant benefit within the scope of anti-corruption laws.
- Management and employees in companies feel increasingly uncertain about the scope and requirements of anti-corruption laws. Palpable fear to become the object of law enforcement action or criminal proceedings.

## Hospitality and Compliance

### ▶ Legal framework in Germany (1)

- „Hardcore“ corruption
  - Bribery in the public sector, §§ 332, 334 of the German Criminal Code (Strafgesetzbuch – StGB);
  - Bribery in the private sector, § 299 StGB;
- „Soft“ corruption
  - Acceptance and granting of benefits in the public sector, §§ 331, 333 StGB.
- Scope of §§ 331, 333 StGB: All behaviour which may undermine the public's trust in the integrity and incorruptibility of the public administration;
- Little case law; only one pertaining case (proceedings against the former CEO of EnBW) which is still pending.

## Hospitality and Compliance

### ▶ Legal framework in Germany (2)

- §§ 331, 333 StGB interpreted by legal authors as including benefits granted:
  - to nurture relationships and to gain goodwill;
  - to initiate business dealings;
  - to secure sympathy and good cooperation;
  - to reward favourable actions or decisions.
- If and when such benefits create a state of closeness and dependence between the host and the member of the public administration.
- Wide margin of interpretation/discretion for public prosecutors and courts. Public Prosecutors stress that also benefits of little value granted to a public official may violate anti-corruption laws.
- Lawmaker plans to extend the scope of the bribery in the private sector provision, § 299 StGB.

## Hospitality and Compliance

### ▶ Legal framework in Germany (3)

- Proceedings against the former CEO of EnBW:
  - Only case dealing with invitations of public officials to a sporting event;
  - Cleared of all charges in first instance before the Regional Court of Karlsruhe. Case still pending at the German Supreme Court (Bundesgerichtshof);
  - Invitations to events in the fields of sports, art or culture may constitute an illegal granting of a benefit within the meaning of §§ 331, 333 StGB;
  - Verdict relies heavily on EnBW sponsoring the 2006 Soccer World Championships in Germany. Diminished relevance for companies not sponsoring the event of the invitation and for invitations in the private sector.

## Hospitality and Compliance

### ► Effects (1)

- Effects of legal uncertainty can be seen already today and will become more obvious in the near future:
  - Companies have to sustain increased administrative efforts for the legal assessment of planned invitations;
  - Reduced attractiveness of hospitality elements as a business communication tool;
  - Hesitation to use existing hospitality assets (instead, tickets are awarded to employees as an incentive or through raffles);
  - Reduced number of invitations of actual and potential business partners, in particular in the public sector;
  - Normal business relationships, in particular with the public sector overshadowed by fear and uncertainty;
  - Public sector loses a public platform for representing itself;

## Hospitality and Compliance

### ► Effects (2)

- Curbed spending affects not only major sporting events like Soccer World or European Championships or the Olympic Games, but also and even more so “normal” sporting events like the football games of the German Bundesliga;
- Companies will re-evaluate their sponsoring strategies, in the medium and long term;
- Business lounges and business seats are an important factor for the financial viability of existing and planned sporting venues;
- Reduced availability of sporting venues will affect sports in general;
- Sports fans may also feel the effects (According to Uli Hoeneß the GM of Bayern Munich the revenues from business lounges and business seats are used to cross-subsidize cheaper tickets for the fans in the so-called „Südkurve“).



## Hospitality and Compliance

### ► Solutions

Provide legal certainty for business hospitality:

- Statement of the lawmaker clarifying the scope of the anti-corruption provisions and which companies, prosecutors and courts can use as a yardstick.
- Business relationships are not limited to offices and conference rooms;
- No need for different behavioural standards with regard to public and private companies;
- Rule of reason for socially adequate benefits. No assumption of ill will based on the value of the invitation alone;
- Company initiatives, e.g. anti-bribery initiatives;
- S20 – The Sponsors' Voice seeks a collective solution in dialogue with representatives of politics and sports.

 **Thank you very much !**