

BLOMSTEIN's Hot topics 2024 for the Defence Industry

24. January 2024

As announced last week, BLOMSTEIN is publishing a series of briefings introducing into European and German legal defence matters. In preparation for the new year, our defence team got together and identified the topics that we believe will be relevant for companies in the security and defence industry in the EU and Germany in international trade law, ESG, antitrust law and public procurement law:

- In the area of **public procurement**, the dust has settled somewhat, at least regarding the legal framework. However, further changes are on the horizon:
 - In Germany, the draft bill of the procurement transformation package is pending, which will provide for numerous innovations at national level.
 - At a recent event, the responsible State Secretary at the Federal Ministry for Economic Affairs and Climate Action announced that Germany is pushing for a revision of the public procurement directives at EU level. It remains to be seen whether and in what timeframe this request will bear fruit.
- Last year, the European Commission opened a new chapter in the enforcement of antitrust law with the prosecution of a cartel in the defence sector. It imposed a fine of several million euros after an investigation lasting less than two years. This action signals a continuation of effective antitrust enforcement in 2024, with particular attention expected to be paid to the defence sector. The EU Commissioner for Competition Policy, Didier Reynders, emphasized in this context that even in times of geopolitical change, strategically important economic sectors are not exempt from antitrust supervision.
- **International trade law** also remains dynamic:
 - The European Commission is taking a stance on the protection of the European economy as part of its "EU Economic Security Package". In this context, the European legal framework for investment control is also to be revised. In Germany, investment control is to be bundled in an Investment Control Act. In addition, outbound investments are also to be controlled.
 - In the area of research and development, the EU Commission plans to strengthen the cooperation between civilian and military researchers. In particular, the gaps between Horizon Europe and the European Defence Fund are

to be closed. One possible approach is to abolish the exclusive focus of the Horizon Europe successor FP10 on civilian research.

- On the other hand, the German Arms Export Control Act, which was the subject of controversy at the beginning of the legislative period, is now dormant. According to the Federal Ministry for Economic Affairs and Climate Action, the key points of the draft law have been undergoing coordination within the federal government for over a year.
- In the area of **ESG**, the number of new requirements remains high:
 - In Germany, the Supply Chain Act since the beginning of the year applies to companies with 1,000 employees or more. This year, the competent German authority (BAFA) will critically review the reports of companies that were previously covered (>3,000 employees) and investigate possible violations. The past year has already been a demonstration that the authority is not an actor without teeth, but rather a confident user of its powers. In the defence industry, it is to be expected that the authorities will scrutinize the implementation of the law in companies with a close eye. At EU level, the Supply Chain Directive adds further tightening measures to be implemented in the member states. On the other hand, this creates a level playing field within the EU.
 - In addition, further ESG requirements will be tightened this year. Imports of certain goods are now subject to reporting obligations under the EU Carbon Border Adjustment (CBAM). As the regulation also covers imports of iron, steel and aluminium, the defence industry is directly affected. The applicability of the new EU regulation for deforestation-free products (EUDR) should also be examined by companies in the defence industry, as it for example also regulates the import of rubber and certain rubber products.
- It can be assumed that the EU's Critical Raw Materials Act will be further advanced in 2024. The EU plans to ensure that raw materials such as titanium or tungsten, which are essential for the defence sector, are imported consistently and sustainably and that their dependence on individual countries is reduced. This may trigger tighter controls of the supply chain, including further reporting obligations.

The last few years have shown that changes to one's security policies usually only have a short lead time. We are curious to see how long our assessment will hold true. We will closely monitor the above-mentioned topics and provide information on them, particularly in the form of briefings. However, the same naturally also applies to any further or other topics that arise.

Please feel free to contact us at any time if you have any questions. If you see a topic that we should address, please let us know!

BLOMSTEIN

Stay tuned: In our next defence briefing - to be published on 31 January - we will provide an introduction to the best way to obtain direct awards.