



Noerr Corona Crisis Center

Executive Summary

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/ The Most Current Legal Issues

SARS-CoV-2/COVID-19 (corona) is spreading globally. Government measures taken to slow down the spread have significant impacts and raise new legal questions every day. The following will provide you with a summary of the current issues.

For more comprehensive information, please refer to [Noerr's Corona Crisis Center](#).

/ Funding- / State Financing Measures

- In order to mitigate the economic impact of the COVID-19 pandemic on businesses, numerous corona-specific financial aid measures have been set up at federal and domestic state level and have now been implemented. This includes *inter alia* loans at low interest rates with a back-to-back guarantee of 80% to 100% by the German state-owned development bank KfW, guarantees (*Bürgschaften*) and immediate coronavirus aid (*Corona-Soforthilfe*) as well as the recently adopted federal aid programme which provides grants in form of bridging aid of up to EUR 150,000 for small and medium sized enterprises. In addition, the government released and adopted an economic stimulus package of EUR 130 billion which includes *inter alia* tax reductions (further information on specific financial aid measures can be found [here](#)).
- The corona-specific financial aid has been aligned with the "[Temporary Framework](#)" for state aid measures adopted by the European Commission (Commission) on 19 March 2020 (first amendment adopted on 3 April 2020, second amendment adopted on 8 May 2020, third amendment adopted on 29 June 2020). All respective national corona-specific financial aid programmes must comply with the conditions set forth in the Temporary Framework. The Commission already approved most of the federal government's financial aid measures in March 2020 (see further information [here](#)).
- On federal level, an Economic Stability Fund (ESF) has been established which will be able to provide guarantees, loans and recapitalisation measures (i.e. equity investments). As the ESF still has to be approved by the Commission, it is not operational yet. The approval of the ESF and related implementing regulations by the Commission can be expected shortly (further information can be found [here](#)).

- In order to support start-ups and young growth companies during the COVID-19 crisis, the federal government also announced a EUR 2 billion assistance package for start-ups (further information can be found [here](#)).

German Tax Authorities React to COVID-19 Pandemic

As a supporting measure, the German tax authorities are offering initial reliefs to avoid liquidity bottlenecks. In addition, new tax measures are implemented in connection with the COVID-19 pandemic.

- Following the measures taken by the tax authorities of the states (*Länder*), the Federal Ministry of Finance (BMF) and the Federal Ministry of Economic Affairs and Energy (BMWi) have agreed on a package of measures dated 13 March 2020, including several tax reliefs in order to support companies and entrepreneurs. According to the letter dated 19 March 2020, the BMF and the federal states specified the following measures:
 - ▷ Deferral of due and payable taxes;
 - ▷ Reduction of current tax prepayments;
 - ▷ Waiver of enforcement measures until the end of 2020;
 - ▷ Remission of certain late payment fines.

In addition, with regard to taxes that are administered by the customs administration (e.g., energy duty and aviation tax), the Central Customs Authority (*Generalzolldirektion*) has been instructed to make appropriate concessions to taxpayers. The same applies to the Federal Central Tax Office (*Bundeszentralamt für Steuern*), which will proceed accordingly with respect to insurance tax and value added tax, which fall within its remit.

- Companies, entrepreneurs and freelancers shall also review whether further individual tax reliefs and advantages (e.g., application for tax relief, time extensions) apply and how to contact the respective tax authorities.
- The COVID-19 pandemic also has other effects and implications, e.g., tax related questions in connection with working from home, effects on financial accounting, taxes in connection with economic stabilisation funds and the compatibility of state aid and tax reliefs with European law.
- In addition to these initial tax relief measures, which were initiated by the federal government and the federal states on a largely executive basis, further tax measures will be added with the law on the implementation of tax relief measures to cope with the corona crisis (Corona Tax Assistance Act, Bundestag printed paper 19/19150 and Bundesrat printed paper 290/20) and the economic stimulus package "Fighting corona consequences, securing prosperity, strengthening future capability" prepared by the governing coalition. These include, in particular, the following tax measures:
 - ▷ Application of the reduced VAT rate to restaurant and catering services provided after 30 June 2020 and before 1 July 2021, with the exception of the supply of beverages;

- ▷ Extension of the tax retroactive periods regarding corporate reorganisations from eight to twelve months for a temporary period (with possibility of extension by decree) – complementary to the amendment of Section 17 para. 2, sentence 4 of the German Transformation Act (*Umwandlungsgesetz*) as part of the Act to Mitigate the Consequences of the COVID-19 Pandemic under civil, insolvency and criminal procedural law (Federal Gazette I 2020, pages 569 subsequent);
- ▷ From 1 July 2020 until 31 December 2020, a temporary reduction in the regular VAT rate from 19% to 16% and the reduced VAT rate from 7% to 5%;
- ▷ Extension of the tax loss carryback possibilities for the years 2020 and 2021 to EUR 5 million (or EUR 10 million in the case of a joint assessment) already usable for the year 2019 by creating a tax “corona provision” (to be released by 31 Dec. 2022);
- ▷ Introduction of a declining balance depreciation with a factor of 2.5 compared to the currently applicable depreciation and a maximum of 25% per annum for movable assets for the years 2020 and 2021;
- ▷ Introduction of a so-called “option model” allowing partnerships to opt for the German corporate income tax regime;
- ▷ Increase in the discount factor for commercial income to four times the German trade tax assessment amount for the purposes of Section 35 of the German Income Tax Act;
- ▷ Deferral of the payment of the German import turnover tax to the 26th of the following month;
- ▷ Increase in the allowance to EUR 200,000 in the context of the German trade tax additions (Section 8 of the German Trade Tax Act).

Further information on this and other tax aspects of the corona crisis can be found on our homepage.

→ [Corona Tax Assistance Act passed by Bundesrat; governing coalition agrees on further tax measures in stimulus package](#)

→ [State support for start-ups during the coronavirus crisis – Update to the € 2 billion assistance package for start-ups](#)

→ [State support for start-ups during the coronavirus crisis](#)

→ [Act on the establishment of an economic stabilisation fund](#)

→ [Aid from the German federal and state governments at a glance](#)

→ [European Commission adopts Temporary Framework for State aid measures to support corona pandemic affected economy](#)

→ [Financing guide – coronavirus](#)

→ [German fiscal authorities respond to corona pandemic by offering tax relief for affected companies](#)

→ [The European Commission’s response to corona under EU State Aid rules](#)

→ [National and European measures to reduce the economic impact of the coronavirus crisis](#)

/ Capital Markets/M&A

M&A Transactions in Times of Corona

Many M&A transactions are currently put “on hold”. Moreover, the crisis may be a turning point for the seller-friendly M&A market.

- Buyers could demand the return of the MAC clause – i.e., the right to withdraw from an agreed transaction in the event of a material adverse change (Material Adverse Change – MAC) in the business or financial position of the target company. In particular, agreements in connection with capital market transactions such as a takeover bid will more often contain a MAC clause.
- In the case of German law M&A contracts without a MAC clause, buyers could attempt to invoke a disturbance of the basis of the transaction (§ 313 BGB). The chances of success of this plea depend on the specific individual case, but are subject to high requirements.

[➔ Impact of the coronavirus pandemic on M&A transactions subject to merger control](#)

[➔ Corona crisis on the capital markets – what you should check now](#)

[➔ Transactions in times of corona: The return of the MAC clause?](#)

Stricter rules on control over foreign investments

In the light of the COVID-19 pandemic, the German legislator and government departments have been focusing much more closely on government measures to prevent takeovers. The EU Commission urged the member states to review the existing investment regimes, to adapt them if necessary and to exhaust all available options when implementing them in order to closely examine foreign investors’ holdings in European companies, especially in systemically relevant areas.

At the legislative level, Germany is currently using the already pending reforms of the Foreign Trade and Payments Act and the Foreign Trade and Payments Ordinance for this purpose. In response to the COVID-19 pandemic, Germany has made specific proposals for the introduction of further reporting requirements for investments in the health sector, for lowering the level of risk that must be present for prohibitions and restrictions, and for a ban on the execution of transactions subject to reporting requirements. Alongside this, further measures are being discussed, such as a further lowering of the thresholds of currently 25% (across all sectors) or 10% of voting rights (for defined target companies involved in the critical infrastructure, armaments and IT security sectors) or an extension of the existing reporting require-

ments (for investments in the above target companies). However, these have not yet reached the stage of a draft law or ordinance and their introduction is not essential due to the fact that the German regime is strict by international standards anyway.

At the latest since the CureVac case and the alleged intention of the USA to take over this leading vaccine manufacturer, the German Federal Ministry for Economic Affairs and Industry has been given a wake-up call and is examining declared and undeclared foreign investments very closely, with an increasingly restrictive tendency. Foreign investors are therefore well advised to keep track of further developments.

→ [Germany's Investment Control Response to Covid-19 - Further tightening planned for the health sector](#)

→ [Public Takeovers during the Covid-19 Pandemic](#)

→ [In the wake of the Covid-19 pandemic: Germany considers prohibition to close transaction pursuant to foreign direct investment control regime](#)

→ [Restructuring corporate bonds during the crisis](#)

→ [European Commission calls for more protection of critical European assets from foreign investors following corona pandemic](#)

→ [Corona crisis as a legal challenge for the annual general meeting 2020](#)

Labor Law/Short-time Work Compensation

- One of the most important instruments for businesses for reducing (unused) personnel capacity and the associated financial burden resulting from the coronavirus crisis has been the **introduction of short-time working**. As a first step, the federal government has eased the conditions for receiving **short-time work compensation**. For example, companies can already use short-time work compensation if only 10% of the employees can no longer be employed. Apart from this, the coalition committee has now decided to increase the **level of compensation for short-time work** when working hours are reduced by at least 50% to 70% of the employee's standard net wage (*pauschaliertes Nettoentgelt*) from the fourth month (or 77% for households with children) and to 80% from the seventh month (or 87% for households with children). In the event of "corona-related" absences from work, companies are therefore well advised to examine the options for ordering short-time working quickly and comprehensively. If short-time working has already been introduced in a company, they should quickly look at whether there is a need

for action and modification in view of the latest legal reforms, especially if top-up amounts are paid.

- With the gradual **easing of the lockdown**, many companies are getting their businesses back up and running. This involves complex challenges for companies and their workforces in relation to **health and safety and infection prevention**. The uniform health and safety standards for Covid-19 presented by the Federal Ministry of Labour and Social Affairs on 16 April 2020 now also has to be given special attention. Companies should make sure to definitely examine the recommended safeguards, in addition to the usual risk assessment under employment law. In addition to this, country-specific rules designed to protect against infection, employment restrictions and quarantine rules have to be observed. Measures by companies to implement health and safety and infection prevention rules should always make sure not to torpedo any state subsidies that continue to be needed, such as short-time work compensation. Liability risks can largely be cushioned by structured compliance with health and safety regulations.
- The Federal Ministry of Labour and Social Affairs presented an initial proposal for the future of employment courts, to apply for a limited time, in a ministerial bill of 9 April 2020 (Act to Ensure the Functioning of the Labour and Social Court System during the COVID-19 Epidemic and to amend other Laws (**COVID-19-ArbGG/SGG-AnpassungsG**)). The revised draft act provides in particular for additional options for the parties to legal proceedings to be at different venues during an oral hearing due to the pandemic and to conduct the proceedings by means of simultaneous audio and video transmission.
- In order to ensure the **ability of works councils** to act during the COVID-19 pandemic, the new section 129 German Works Council Act allows participation in works council meetings and voting in telephone or video conferences, providing it is ensured that no third parties are able to gain knowledge of the contents of the meeting.
- Employees who have to look after their children due to the official closure of a nursery or school and are not able to work can claim compensation equivalent to 67% of their monthly net income for a period of up to six weeks under the new section 56(1)(a) of the German Protection against Infection Act.

➔ [Supervisory board elections in times of the coronavirus pandemic](#)

➔ [The \(temporary\) future of labour courts – No revolution after all – an update](#)

➔ [Increased short-time work compensation – A challenge in practice?](#)

➔ [Employment-law aspects of restarting after lockdown – Part 1](#)

➔ [Employment-law aspects of restarting after lockdown – Part 2](#)

➔ [The \(temporary\) future of labour courts – Could Covid-19 drive the digitalisation of the labour court system?](#)

- [Employer and works council in the coronavirus crisis: Lonely together? – Feasibility of implementing co-determined measures](#)
- [Covid-19/financial support for employees in the event of school and nursery closures](#)
- [Selected employment law Q&As for 20 countries](#)
- [The coronavirus infects the German labor market – Effects on the employment relationship and possible reactions of companies](#)

COVID-19 Statute

A detailed summary including the “Law on mitigation of the consequences of the COVID-19 pandemic” can be found [here](#).

A bilingual version of the wording of the act (German/English) can be found [here](#).

The regulations are accompanied by measures already initiated by the federal and state governments in the areas of [Finance](#), [Labor law](#) and [Tax law](#).

Overview

Insolvency law

The obligation to file for insolvency is suspended until 30 September 2020 for entities which were not insolvent as of 31 December 2019 under certain conditions. In addition, legal risks for management continuing trading and lenders extending existing loans or providing fresh money are mitigated.

Civil law

Consumers and small businesses may refuse performance until 30 June 2020. Landlords may not terminate tenancies for default in the same period. Under certain circumstances, a consumer's obligations under loan contracts are deferred until 30 June 2020.

Corporate law

Temporary simplifications apply to the passing of resolutions by organs of corporations, cooperatives, associations and condominium owners' association. Public companies (stock company (AG), partnership limited by shares (KGaA), *societas europae* (SE)), may hold the annual general meeting (AGM) for 2020 in a purely virtual manner. The deadline for reorganisation measures relying on the 2019 balance sheet have been extended.

- [Moratorium in lending law due to the Covid-19 pandemic – Outstanding legal issues and recommendations to lenders for practical implementation](#)
- [Measures to Mitigate the Effects of the COVID-19 Pandemic in Civil, Insolvency and Criminal Proceedings](#)
- [Current developments in the U.S. – the economic impact of the Covid-19 pandemic](#)
- [Current developments in the UK – the economic impact of the Covid-19 pandemic](#)

/ Tax

→ [Corona Tax Assistance Act passed by Bundesrat; governing coalition agrees on further tax measures in stimulus package](#)

→ [Effects of the coronavirus pandemic on commercial accounting](#)

→ [German fiscal authorities respond to corona pandemic by offering tax relief for affected companies](#)

/ Supply Chains/Force Majeure

Exclusion of the Duty of Performance and Force Majeure in Supply Chain Relationships

Depending on the individual case, the COVID-19 pandemic can lead to an exemption of the duty of performance in contractual relationships.

- If the contractual relationship is subject to German law, the debtor may refuse performance in accordance with section 275 BGB, if it is impossible for the debtor or anyone else or if performance would require unreasonable efforts. However, the debtor may have to pay damages if the latter has at least negligently caused the impossibility of performance (e.g., if, in the event of delivery bottlenecks, he fails to procure a replacement for the production of necessary parts that is reasonable for the debtor).
- A contract adjustment up to the termination according to section 313 BGB is also possible.
- In the case of an international purchase of goods in accordance with the UN purchasing law, the force majeure objection may apply. However, applicability will have to be determined on a case-by-case basis.

→ [Impossibility and force majeure – possible legal implications of the Coronavirus epidemic](#)

Regulation

- [Corona pandemic: developments in German antitrust law](#)
- [New intervention powers of public authorities for obtaining urgently needed medical products – application unclear](#)
- [Relaxation of coronavirus restrictions – risk of a regulatory patchwork and unequal treatment](#)
- [Public procurement in relation to the coronavirus pandemic](#)
- [All EU competition authorities jointly address application of competition law during corona pandemic](#)
- [Restrictions on the export and movement of medical protective clothing due to coronavirus – with exceptions and prior approval requirements](#)
- [The European Commission shows regulatory flexibility due to Covid-19 - Medical devices and PPE can currently be marketed even without CE marking!](#)

/ Risk Management & Privacy Protection

Insurance Cover for Business Interruption

In the event of a company's shutdown, insurance coverage may compensate for the loss of earnings. However, the German insurance market currently offers only limited possibilities to address the supply chain disruptions caused by the COVID-19 pandemic. Coverage concepts should therefore be reviewed.

- Business interruption policies based on FBUB 2010 or AMBUB 2011 (Standard Terms and Conditions of the German Insurance Association) in principle do not cover business closures due to pandemics in their general policies. In case of extended coverage or all-risk policies, the insurance coverage extends further and may, depending on the contract, cover corona-related business closures. Companies whose business depends on key persons or certain events may have covered their closure in special contingency insurance policies. It should also be checked whether the respective insurance product contains a pandemic risk exclusion.
- If cases of infections are presumed in the company, close coordination with the insurer is indicated. If the company management, for example, considers temporary interruptions of operations for reasons of occupational safety without any intervention of a regulatory authority, there is a risk of a gap in coverage due to the lack of an insured event. Early quarantine measures can serve to reduce damage within the company. Therefore, companies should seek cooperative solutions with the insurer.
- Policyholders must adhere to account notification, cooperation and reporting obligations, and potentially also compliance with safety regulations and cooperation with the regulatory authorities. All measures taken to protect the coverage should be carefully documented.

➔ [Insurance coverage for cyber risks resulting from increased home-office activities due to the coronavirus](#)

➔ [Event cancellation in connection with the coronavirus – The scope of event cancellation insurance coverage](#)

➔ [Compensation for business closures unlikely as the law now stands](#)

➔ [Effectively securing and enforcing claims in court despite the negative effects of the new coronavirus](#)

➔ [The coronavirus and insurance coverage for business interruption – A guide for the control of coverage concepts](#)

➔ [Closure of business facilities by administrative order due to the coronavirus](#)

➔ [Data protection and coronavirus prevention](#)

Real Estate

- [Security for leases during the coronavirus pandemic – a lifeline for landlords?](#)
- [Effect of the 800 square-metre regulations on tenants' claims to rent reduction in the retail sector](#)
- [Does the coronavirus pandemic threaten forward deals and forward leases?](#)
- [Construction contracts and project development in the time of coronavirus](#)
- [Changes in tenancy law as a result of the Covid-19 pandemic](#)
- [Impact of the corona crisis on the obligation to pay rent](#)

/ Contacts

Restructuring

Germany:



Dr. Dorothee Prostedter

Partner
Munich
+49 89 28628377
dorothee.prostedter@noerr.com



Dr. Thomas Hoffmann

Partner
Frankfurt
+49 69 971477161
thomas.hoffmann@noerr.com



Dr. Martin Kleinschmitt

Partner
Berlin
+49 30 20942000
martin.kleinschmitt@noerr.com

Corporate/Capital Markets/Corporate Finance/M&A

Germany:



Dr. Florian Becker

Partner
Munich
+49 89 28628177
florian.becker@noerr.com



Dr. Michael Brellochs

Partner
Munich
+49 89 286283603
michael.brellochs@noerr.com



Dr. Dorothee Prostedter

Partner
Munich
+49 89 28628377
dorothee.prostedter@noerr.com



Prof. Dr. Christian C.-W. Pleister

Partner
Berlin
+49 30 20942309
christian.pleister@noerr.com



Dr. Ralph Schilha

Partner
Munich
+49 89 28628167
ralph.schilha@noerr.com



Dr. Laurenz Wieneke, LL.M.

Partner
Frankfurt on the Main
+49 69 971477231
laurenz.wieneke@noerr.com

CEE:



Barbara Kusak
Partner
Prague
+420 233 112111
barbara.kusak@noerr.com



Jakub Lerner, LL.M.
Associated Partner
Warsaw
+48 22 3788512
jakub.lerner@noerr.com



Dr. Edina Schweizer
Associated Partner
Budapest
+36 1 2240900
edina.schweizer@noerr.com



Konrad Werner
Counsel
Warsaw
+48 22 3957670
konrad.werner@noerr.com



Vyacheslav Yugai
Associated Partner
Moskow
+7 495 7995696
vyacheslav.yugai@noerr.com

Employment & Pensions

Germany:



Dr. Andreas Butz
Partner
Düsseldorf
+49 211 49986254
andreas.butz@noerr.com



**Dr. Wolfgang Schelling,
Maître en droit**
Partner
Munich
+49 89 28628236
wolfgang.schelling@noerr.com



Dr. Stefan Schwab
Associated Partner
Berlin
+49 30 20942317
stefan.schwab@noerr.com

CEE:



JUDr. Pavol Rak, Ph.D.

Partner
Bratislava
+421 2 59101010
pavol.rak@noerr.com



Radoslaw Biedecki

Partner
Warsaw
+48 22 3788516
radoslaw.biedecki@noerr.com



Olga Mokhonko

Counsel
Moscow
+7 495 7995696
olga.mokhonko@noerr.com

Tax

Germany:



Dr. Carsten Heinz

Partner
Berlin
+49 30 20942074
carsten.heinz@noerr.com



Georg Edelmann

Partner
Munich
+49 89 28628169
georg.edelmann@noerr.com



Peter Scheuch, M.I.Tax

Senior Associate
Dresden
+49 351 816600
peter.scheuch@noerr.com



Ulrike Sommer

Associated Partner
Düsseldorf
+49 211 49986257
ulrike.sommer@noerr.com

CEE:



Iulian Sorescu, FCCA, CMC

Partner
Bucharest
+40 213125888
iulian.sorescu@noerr.com



Dr. Ádám György Bodor

Counsel
Budapest
+36 1 2240900
adam.bodor@noerr.com



Maxim Vladimirov

Associated Partner
Moscow
+7 495 7995696
maxim.vladimirov@noerr.com

Real Estate

Germany:



Annette Pospich

Partner
Munich
+49 89 28628218
annette.pospich@noerr.com



Dr. Dirk Lentfer

Partner
Berlin
+49 30 20942083
dirk.lentfer@noerr.com

CEE:



Dr. Zoltán Nádasy, MRICS

Partner
Budapest
+36 1 2240900
zoltan.nadasdy@noerr.com



Paweł Żelich

Associated Partner
Warsaw
+48 22 3788500
pawel.zelich@noerr.com

Contracts/Supply Chain

Germany:



Dr. Felix Muhl

Partner
Hamburg
+49 40 300397145
felix.muhl@noerr.com



Janik Goßler, LL.M.

Associated Partner
Frankfurt on the Main
+49 69 971477121
janik.gossler@noerr.com

CEE:



Eszter Sieber-Fazakas, LL.M.

Senior Associate
Budapest
+36 1 2240900
eszter.fazakas@noerr.com



Cristina Stamboli

Senior Associate
Bucharest
+40 21 3125888
cristina.stamboli@noerr.com



Stefan W. Weber

Associated Partner
Moscow
+7 495 7995696
stefan.weber@noerr.com

Financial Institutions/Insurance

Germany:



Dr. Thomas Heitzer
Partner
Düsseldorf
+49 211 49986170
thomas.heitzer@noerr.com



**Dr. Jens H. Kunz, LL.M.
(UT Austin)**
Partner
Frankfurt on the Main
+49 69 971477218
jens.kunz@noerr.com

CEE:



Ludomir Biedecki
Associated Partner
Warsaw
+48 22 3788514
ludomir.biedecki@noerr.com



Magdalena Alexandra Lupoi
Counsel
Bucharest
+40 213125888
magdalenaalexandra.lupoi@noerr.com

Antitrust & Competition

Germany and Brussels:



Dr. Fabian Badtke, LL.M.
Partner
Frankfurt on the Main
+49 69 971477124
fabian.badtke@noerr.com



Dr. Fabian Hübener, LL.M.
Associated Partner
Brussels
+32 2 2745572
fabian.hübener@noerr.com



Dr. Jens Peter Schmidt
Partner
Brussels
+32 2 2745570
Jens.schmidt@noerr.com

CEE:



Rusandra Sandu
Partner
Bucharest
+40 21 3125888
Rusandra.sandu@noerr.com



Joanna Szacinska
Associate
Warsaw
+48 22 3957653
joanna.szacinska@noerr.com



Stefan W. Weber
Associated Partner
Moskow
+7 495 7995696
stefan.weber@noerr.com

Health Care/Regulatory

Germany:



Evelyn Schulz
Partner
Dresden
+49 351 8166041
evelyn.schulz@noerr.com



Dr. Bärbel Sachs, LL.M.
Partner
Berlin
+49 30 20942131
baerbel.sachs@noerr.com

CEE:



Luiza Bedros
Counsel
Bucharest
+40 21 3125888
luiza-elena.bedros@noerr.com



Mgr. Borivoj Libal
Associated Partner
Prague
+420 233 112111
borivoj.libal@noerr.com

Disputes

Germany:



Hans Christian Kirchner
Partner
Berlin
+49 30 20942060
hc.kirchner@noerr.com



Dr. Tobias B. Lühmann
Senior Associate
Berlin
+49 30 20942391
tobias.luehmann@noerr.com

CEE:



Alexandru Ene
Partner
Bucharest
+40 21 3125888
alexandru.ene@noerr.com



Dr. Wojciech Wąsowicz
Associated Partner
Warsaw
+48 22 3957667
wojciech.wasowicz@noerr.com



Viktor Gerbutov
Associated Partner
Moscow
+7 495 7995696
viktor.gerbutov@noerr.com

IT/Data Protection

Germany:



Prof. Dr. Joachim Schrey
Partner
Frankfurt on the Main
+49 69 971477241
joachim.schrey@noerr.com

CEE:



Raluca Botea
Senior Associate
Bucharest
+40 21 3125888
loana-raluca.botea@noerr.com



Dr. Edina Czeglédy
Counsel
Budapest
+36 1 2240900
edina.czegledy@noerr.com



Vyacheslav Khayryuzov
Counsel
Moscow
+7 495 7995696
vyacheslav.khayryuzov@noerr.com

Alicante
Berlin
Bratislava
Brüssel
Budapest
Bukarest
Dresden
Düsseldorf
Frankfurt/M.
Hamburg
London
Moskau
München
New York
Prag
Warschau

noerr.com