

## Flood Light On Germany

- Impressions on the German economy from a legal perspective by **BRÖDERMANN JAHN** of Hamburg, Germany –

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Although Germany is struggling with the Euro crisis, the workflow of the Hamburg based *Primerus* firm BRÖDERMANN JAHN indicates that **booming business** brings along fascinating legal issues while disputes in the **aftermath of the Lehman Brothers worldwide crisis** still subsist. A short overview:

### Energy

**Exit from Nuclear Power after Fukushima:** In view of the disaster in Fukushima, the German government has adopted an exit strategy from nuclear power. While this exit causes major practical difficulties and legal disputes (e.g. over damages sought by energy suppliers), it has caused a significant increase in activity in the renewable energy market. The time pressure for the transformation of the energy market towards renewable green energy has increased considerably. Brödermann Jahn is involved at the highest level and in a number of negotiations and disputes (for example, in a multi-million dollar matter which we brought to the attention of both the courts and the regulating authorities further to the delay in the implementation of grid access for offshore-wind parks).

**Liberalization of the gas market:** Since the liberalization of the gas market in 1998, and throughout 2011 and 2012 further new possibilities of contractual supply regimes have continued to arise. BRÖDERMANN JAHN successfully negotiated arrangements for a major international client for structured purchases from a variety of different gas suppliers, enabling the client to use competition as leverage on a daily basis when purchasing gas.

**Aftermath of Lehman Brothers:** On several levels, professional purchasers of oil and gas have fought about the reduction of prices paid since September 2008 after the Lehman Brothers bankruptcy caused a worldwide financial crisis. For example, in one case we obtained a ca. 70 million Euro judgment by the Appellate Court of Hamm against the gas trader RWE (Judgment of 16 December 2011, published in BeckRS 2012, 04710). The court followed our argumentation and held, that the price collapse in the months after September 2008 from 35,00 EUR to 16,00 EUR (for three year forward-prices as listed at the London Middle Exchange) in the aftermath of the Lehman Brothers insolvency was a fundamental change within the meaning of an Economical Clause contained in standard contract terms. Therefore the purchaser of the gas was entitled to a reduction in price. The case is presently pending before the German Federal Supreme Court.

Further, newspaper reports reveal that the gas giants Eon and RWE are also settling with their suppliers (like Gazprom) retroactively with respect to gas supply contracts performed in 2008/2009 (see the leading German newspaper *Frankfurter Allgemeine Zeitung* of 4 July 2012, p. 13).

## **Plant Construction & IT**

Information Technology continues to a hot topic on many levels.

**Plant Construction:** German industry continues to be active in international plant construction projects which always include, among others, IT questions. In some contracts BRÖDERMANN JAHN has proposed and clients and contract partners have accepted to work with the new neutral **Unidroit Principles of International Commercial Contracts** (2011) as the applicable legal regime in order to overcome the clash of legal cultures between civil law and common law.

**Subcontracting from US companies:** German technology remains a valuable option for international projects. Thus, BRÖDERMANN JAHN has assisted a German technology company to subcontract from a US giant for the supply of technology and after sales services for a major Asian project in which a US company was nominated prime contractor after winning a tender for supply.

**Sale of Software:** The European Court of Justice decided on 3 July 2012 a long debated question. The court held that (used) software can be sold (ECJ-C\_128/11). This may have an important impact on the control of software costs. Brödermann Jahn has been assisting clients in the resale of software which has become superfluous in the context of a re-organization.

## **Automotive**

The automotive sector remains vibrant in Germany. Yet, it is also becoming more and more international. In 2012, BRÖDERMANN JAHN continues to advise foreign suppliers and producers to subcontract sensible shares in the automotive value chain.

## **Life Style**

German life is not limited to heavy industry and technology. Life style plays an important role in Germany. This continues to entail trade and also the production of life style and health products. BRÖDERMANN JAHN has for years advised its clients in sales around the globe.