



Jason Gardner <jgardner@spreadly.com>

German law - regulatory annex

6 messages

Jason Gardner <jgardner@spreadly.com>

Fri, Feb 24, 2023 at 12:55 PM

To: Jonathan Beak <jonathanbeak@legaledge.co.uk>

Hi Jonathan,

We're working through some compliance documentation with BP International. Their team is asking us to incorporate the attached Regulatory Annex citing German law into our agreement. Is there someone at LegalEdge that can help us review this? Thanks.

**Jason
Gardner**
Sr. Director of Legal



o 888.727.7750 m 239.450.1250

jgardner@spreadly.com



300 Morris St., Ste. 400, Durham, NC 27701

**Regulatory_Annex.docx**
106K**Jonathan Beak** <jonathanbeak@legaledge.co.uk>

Mon, Feb 27, 2023 at 5:27 AM

To: Jason Gardner <jgardner@spreadly.com>

Hi Jason – leave it with me while I find out more.

How much of this do you feel comfortable signing up to (ignoring the German law requirements for now)?

All the best,

Jonathan Beak

Consultant Legal Counsel

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[LinkedIn](#)[Legaledge.co.uk](#)

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From: Jason Gardner <jgardner@spreadly.com>**Date:** Friday, 24 February 2023 at 17:56**To:** Jonathan Beak <jonathanbeak@legaledge.co.uk>**Subject:** German law - regulatory annex

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Jason

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300 Morris St., Ste. 400, Durham, NC 27701

Jason Gardner <jgardner@speedly.com>
To: Jonathan Beak <Jonathanbeak@legaledge.co.uk>

Mon, Feb 27, 2023 at 12:20 PM

Thanks Jonathan. We have some concerns about the reporting requirements in Addendum 1. We're not sure if those originate from some requirement of German law.

Jason

Gardner

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Jonathan Beak <Jonathanbeak@legaledge.co.uk>
To: Jason Gardner <jgardner@speedly.com>

Mon, Feb 27, 2023 at 2:02 PM

I've asked one of our partners if they can take a look. I'll come back to you with a proposed price as soon as I get a response.

I doubt those reporting requirements are statutory

All the best,

Jonathan Beak

Consultant Legal Counsel

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From: Jason Gardner <jgardner@spreadly.com>
Date: Monday, 27 February 2023 at 17:21
To: Jonathan Beak <Jonathanbeak@legaledge.co.uk>
Subject: Re: German law - regulatory annex

Thanks Jonathan. We have some concerns about the reporting requirements in Addendum 1. We're not sure if those originate from some requirement of German law.

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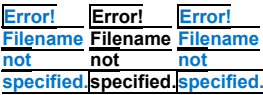
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Jonathan Beak <Jonathanbeak@legaledge.co.uk>
To: Jason Gardner <jgardner@spreadly.com>

Wed, Mar 1, 2023 at 12:06 PM

Hi Jason – here is the feedback. In summary their ask looks market standard.

The bit that I don't like is:

1.1. With regard to the Outsourced Activities, the Contractor shall meet all applicable statutory and contractual obligations of B2Mobility, e.g. under regulatory requirements in particular as per the ZAG and the German Anti-Money-Laundering Act (*Geldwäschegesetz*, "GwG"). The Contractor undertakes to keep abreast of any such requirements without any input on the part of B2Mobility.

How would you know what these are (esp. contractual obligations). I know what it says below but I'd be inclined to push back and ask them that question. Are these specific German law requirements built into their service requirements or is this just a short hand way of them ticking a compliance box?

All the best,

Jonathan Beak

Consultant Legal Counsel

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From: Iain Jacobs <jacobs@thecontractcentre.com>
Date: Wednesday, 1 March 2023 at 12:19
To: Jonathan Beak <Jonathanbeak@legaledge.co.uk>
Subject: RE: German law - regulatory annex

Hi Jonathan,

Feedback from our German lawyer:

The activity of Spredly for BP (B2Mobility) as financial service contractor is subject to extensive financial regulatory regulations according to the German Banking Act (Kreditwesengesetz, known as the "KWG") and the Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz, known as the "ZAG") etc. as B2Mobility itself is under supervision of the German Financial Supervisory Authority ("BaFin").

BaFin's supervision and further financial regulations/regulatory requirements are broad and - at least after Wirecard AG collapsed in Germany - might create a severe business risk for B2Mobility in case of non-compliance.

Thus, B2Mobility is basically obliged/forced to ensure that its sub-contractors also comply with applicable financial regulatory requirements and that BaFin also "reaches through" to sub-contractors. (Otherwise, if BP simply outsourced to providers based abroad who could simply ignore the German legal requirements, BaFin in practice would lose its ability to carry out its regulatory responsibilities.

Thus, B2Mobility's regulatory annex can - although it is very extensive - basically be seen as market standard and is not an overly strict interpretation of German law (permitting audits; keeping records; reporting; and control over subcontracting would seem reasonable obligations in many other contexts from a customer's viewpoint).

We think that your client would not make much headway trying to negotiate significant changes to the text, because it is almost certainly a BP standard out of the control of the BP procurement personnel.

We do recommend that if Spredly intends itself subcontracting part of the activities it should take account of Clause 5 (seeking customer's consent and ensuring a certain flowdown of obligations).

Best regards.

Iain

Iain Jacobs	The Contract Centre GmbH
Managing Director	OBC Suisse
	Europaallee 41
Mobile: +41 79 619 3560	8021 Zurich, Switzerland
jacobs@thecontractcentre.com	www.thecontractcentre.com

From: Jonathan Beak <Jonathanbeak@legaledge.co.uk>
Sent: Monday, 27 February 2023 14:45
To: Iain Jacobs <jacobs@thecontractcentre.com>
Subject: Re: German law - regulatory annex

Yes – payment instructions will pass through the platform and card details will be stored on it too

All the best,

Jonathan Beak

Consultant Legal Counsel

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From: Iain Jacobs <jacobs@thecontractcentre.com>
Date: Monday, 27 February 2023 at 11:02
To: Jonathan Beak <Jonathanbeak@legaledge.co.uk>
Subject: RE: German law - regulatory annex

Hi Jonathan,

I can check with my German colleagues. However, would it be possible to have information on the exact nature of the cooperation (e.g. I see that Spreedly has some kind of API, but will payments actually be flowing through Spreedly's platform?)?

Best regards.

Iain

From: Jonathan Beak <Jonathanbeak@legaledge.co.uk>
Sent: Monday, 27 February 2023 11:26

3/8/23, 1:17 PM

Spreadly Mail - German law - regulatory annex

To: Iain Jacobs <jacobs@thecontractcentre.com>
Subject: FW: German law - regulatory annex

Hi Iain – does anybody on your team have deep enough knowledge to understand whether these are all necessary or at least market practise asks or just BP's overly strict interpretation of German law?

For example I don't see how a US company can be asked to sign up to comply with German law – is this just a lazy way of BP dealing with its own compliance obligations?

All the best,

Jonathan Beak

Consultant Legal Counsel

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300 Morris St., Ste. 400, Durham, NC 27701

Jason Gardner <jgardner@spreadly.com>
To: Jonathan Beak <Jonathanbeak@legaledge.co.uk>

Wed, Mar 1, 2023 at 12:32 PM

Thank you!

3/8/23, 1:17 PM

Spreedly Mail - German law - regulatory annex

**Jason
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jgardner@spreedly.com



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