

EU Stronghold:

Major U.S.-Based Law Firms Are Among the Largest in Germany

Some extremely familiar names appear in the list of Germany's top 50 law firms: Clifford Chance, Latham & Watkins, White & Case, Cleary Gottlieb, Shearman & Sterling, Baker & McKenzie, Milbank Tweed . . . and the list, compiled by the German legal periodical *Juve*, goes on. Apparently, if you're going to the European Union, you've got to be in Germany.

Yet what's most noteworthy is how many firms have not just one but two or more offices here. White & Case has five (Berlin, Düsseldorf, Frankfurt, Hamburg, and Munich). We've all enjoyed the pleasures of the Great Recession domestically, but could the German economy really be that good?

Well, yes. "Germany remains a very interesting market given that it has the largest population (81 million) in the European Union, that the German economy is rather stable, and that Germany is still one of the world's largest exporters," observes Michael Leue, managing partner of the Hamburg office of Bryan Cave. Despite the worldwide slowdown and daily anxiety about the viability of the euro and the economic future of some southern European states (Spain, Greece), Germany remains a market rife with opportunity, Leue says.

Opening the Door

Not that many years ago, this market was entirely closed to outsiders. It wasn't so much the fall of the Berlin Wall and the collapse of communism in Eastern Europe in 1989 that created bright prospects for U.S.-based firms, but a change in local law authorizing the entrance of non-German firms.

Before 1990, it was not possible for German lawyers to provide advice about German law if they were working at a firm not based in Germany, explains Juergen Reemers, partner-in-charge at the Frankfurt office of Jones Day. "There are professional code restrictions that still exist in some countries: Brazil, India, China. In Germany, these restrictions fell away in 1990," he says.

It's a credit to the German Legislature that it was able to notice and react promptly to a market change. Two decades ago, the Legislature noticed that the German regulatory environment affecting the practice of law was not in tune with the regimens in the United States, UK, and elsewhere, Leue notes. It responded, and the approach became much more liberal.

A metamorphosis ensued. "Twenty years ago it was not possible for foreign law firms to be in Germany; it was not possible for German law firms to be in more than one place; it was not possible to appear in front of more than one court; and the largest law firm was probably 25 to 30 lawyers in Germany," Leue recounts. "Today, every lawyer can work all over the country; we can have law offices across Germany; we can have foreign law firms in Germany; the largest law firms in Germany probably range from 500 to 600 lawyers; and we have in the top tier of the market a predominance of UK and U.S. law firms," he says.

First Responders

Among the pioneers, Weil, Gotshal & Manges had been making inroads into Europe since the Iron Curtain collapsed. The firm was following a very strategic

European approach, maintains Gerhard Schmidt, the firm's managing partner in Germany who splits his time between its Munich and Frankfurt offices. Encouraged by the U.S. government's support (*i.e.*, dollars) of post-Communist countries, Weil first opened in Budapest and then entered Prague and Warsaw. Such former Soviet bloc countries offered new markets and lacked strong domestic firms. In the mid-90s, after also opening an office in London, Weil went to Germany, starting with Frankfurt in 2000. (The firm expanded to France in 2003.)

Bryan Cave, by contrast, chose a very different geographic approach, expanding outward from its St. Louis home office early on. "Bryan Cave started setting up offices elsewhere 30 years ago," says Leue. Opening first in London, the firm then focused on Asia, setting up shop in Shanghai, Hong Kong, and Singapore. Its consulting subsidiary has seven offices in Asia.

Leue joined the firm when the Hamburg office opened five years ago. (It also opened in Milan at about the same time before establishing a Parisian outpost one year later.) Just this spring, Bryan Cave opened a second German office in Frankfurt.

While it makes sense that U.S. firms are blanketing European capitals, their presence in multiple cities within Germany is best understood if we recall a bit of pre-war German history—some centuries-old history, in fact, when city states were the definitive political entities and countries such as Italy and Germany had not yet coalesced. Hamburg, for one, was autonomous for a thousand years. Even after Italy and Germany unified late in the 1800s, their diverse cities maintained vibrant and separate identities.

"Unlike other European countries, Germany lacks an obvious place to start," notes Leue. In England, it's inevitably London; in France, Paris; in Spain, Madrid and Barcelona; in Italy, Rome and Milan. Germany has at least six major business centers: Berlin,

Cologne, Düsseldorf, Frankfurt, Hamburg, and Munich.

Berlin, of course, is the country's capital. Cologne is home to automobile manufacturers. (A Ford factory was built there in 1930.) The chemical industry is also strong in the area. Frankfurt is headquarters to German banks and the home of the German stock exchange. "All work that relates to financial institutions tends to be centered here," Reemers says. It's where Jones Day opened its first German office.

Hamburg, to the north near the Denmark border, is a major port city and has the second largest population in Germany (following Berlin). "As a place where, historically, international trade has had a home, that's a good fit for Bryan Cave," says Leue.

Named the European Green Capital 2011 (a title conferred by the European Commission) for its environmental track record, Hamburg has committed to reduce carbon dioxide emissions to zero by the year 2030. The city is also redeveloping its harbor area (HafenCity) with sustainable buildings, and converting a Nazi bunker built by slave labor to a green energy station. The benefits are already palpable as Hamburg has become an increasingly desirable work environment and tourist destination.

Munich is a lure for intellectual property lawyers because the European patent office and the German patent office each have headquarters there. "Munich is an innovation center," notes Reemers. "There is an economic area around Munich where you will find a lot of companies that focus on innovative new products." Hence, Jones Day's decision to open its second German office there.

Düsseldorf may be the Delaware of Germany. Many German corporations are headquartered there as are the main German offices of foreign companies, notes Reemers. With a number of nearby cities adding to a considerable urban sprawl, the Düsseldorf

region is the largest economic powerhouse in Europe, Reemers maintains. Moreover, the German court that handles most important IP litigation is in Düsseldorf.

Reemers expects Jones Day's new office there (it opened just this year), with fewer than a dozen lawyers, to be much larger by the end of the year. As Reemers describes it, "the firm's presence in the city is a logical outgrowth, given Jones Day's origins in Cleveland and its representation of manufacturers in states like Ohio, Illinois, and Pennsylvania. Manufacturers tend to see Germany as an ideal place for presence." Much of the firm's work here involves helping U.S. clients acquire German manufacturing entities or their subsidiaries in Eastern Europe.

Dividing the Spoils

All in all, Germany is a very fragmented market, observes Schmidt. "We don't have one city dominating the country." All the better for the lawyers—as long as those multiple German offices within the same firm don't start competing with each other for bits of Germany-based business.

Leue maintains that Bryan Cave's Frankfurt and Hamburg offices function as one team. "We find it essential that we be as integrated in Germany as the whole of Bryan Cave is." Both offices do mergers and acquisitions as well as corporate work; Hamburg focuses on strategic M&A while Frankfurt tends to represent private equity through financial investors, Leue explains. That said, "We aim at being full-service, [so that] a client from the outside cannot distinguish whether a particular piece of work is being done primarily in Frankfurt or in Hamburg. It's seamless."

Such opportunity naturally breeds intensified competition as the presence of so many major U.S. and Magic Circle firms, all competing with home-grown ones, confirms. The legal market is very tight, says Markus

Hauptmann, a regional section head at White & Case in Frankfurt. By contrast, in the United States, there aren't as many strong Magic Circle firm offices while, in England, there aren't as many strong American law offices.

A firm's client base in Germany might vary. "Some U.S. law firms in Germany are here because they want German-based clients to have access to U.S. lawyers in their time zone; they don't focus so much on local German law advice," says Reemers. That is not the Jones Day model, however. "Jones Day wants to be in competition with local law firms in every jurisdiction in which we are present," adds Reemers.

Jones Day's core German business involves cross-border transactions. Initially, most of that work was done for U.S.-based companies but the client base has broadened. "We have strong operations in other European countries, in France and the UK," Reemers notes. Apparently, those offices are cross-selling effectively.

"Much of the work we do today is also for French clients who want to expand in Germany and who need legal assistance in that expansion," Reemers says. But the firm also has a German client base generated by its resident lawyers. In turn, those German clients may need legal work for cross-border deals involving entities in the U.S., France, or Scandinavia.

Career Paths

Given the multicultural aspect of many transactions, negotiations, and communications are undertaken in a common language: English. "When we negotiate, many times, there is no U.S. client involvement," Reemers recounts. A deal may involve an Italian company, a Hungarian company, and a group of German lawyers. "The communication will be in English even though there won't be a single native English speaker in the room."

Reemers himself reveals no trace of a German accent when speaking English, but then he spent some of his childhood in North Carolina where his father worked as a textile engineer. Reemers earned his LL.M. from American University in Washington, D.C., before working at Rogers & Wells in New York. He returned to Germany in 1995 and became an associate at Jones Day in Frankfurt and, nine years later, partner-in-charge.

It is not an uncommon path for German lawyers hoping to earn top spots for themselves in the German offices of U.S.-based firms. Blue-chip firms in Germany usually hire lawyers who have studied at least a year abroad and earned a master's degree, or even a Ph.D., at a U.S. or UK university, reports Leue.

Seconding German lawyers to their firms' U.S.-based offices is also "a constant part of our human resources and education process," says Hauptmann. New York, not surprisingly, is a popular draw. Associates tend to spend six months to a year in a U.S.-based office, says Hauptmann. However, there are relatively few American lawyers crossing the Atlantic to Germany mainly because they lack the requisite language skills. English is commonly spoken but they still need to speak German to get by.

The practice of law in the U.S. is itself not that different than in Germany, lawyers report. Time sheets, billable hour expectations, how partners work with associates, are all very similar. The one big difference is that there is much less focus on litigation in Germany. America's fee-intensive system, in which large cases are really steered by the parties rather than the court, contrasts with Germany, says Reemers, where the process is much more closely administered by the judiciary.

As a result, there's less lawyer activity and fewer billables generated in trial preparation. "We don't have pretrial discovery

where teams of lawyers sift through binders and file rooms looking for case-relevant documents...litigation [is thus] a lot less cost-intensive for the parties," according to Reemers.

It's also a bit more complicated to become a lawyer in Germany. After primary school, which takes 12 years, lawyer wannabes must study law at a university, which tends to take four to five years. They then take a "first state exam" followed by a two-year training program as a civil servant working in court administration (for a prosecutor), and with a law firm. A "second state exam" functions like a bar exam. Candidates who pass it can work anywhere in Germany as a judge, a prosecutor, or a lawyer.

It's even more complicated for those in the patent and IP realms. "In Germany, you distinguish between a German attorney at law, a patent attorney, and a European patent attorney, explains Frank Peterreins, managing principal of the Munich office of Fish & Richardson. A German patent attorney is not an attorney at law and did not go to law school. Patent prosecution firms in Germany typically hire patent attorneys, and litigation firms hire attorneys at law. Peterreins is one of the few in Germany who hold all three forms of admission.

Corporate work is a bit different as well. "A managing director in a German company has extremely broad freedom and is nearly unrestricted in what he can do," says Holger Iversen, office managing partner of Latham & Watkins in Hamburg. "He may make himself liable to his shareholders, but in principle everything he does is valid."

In the United States, of course, we have that *ultra vires* concept where a corporate actor might be acting outside the scope of his authority. "In Germany, the law protects the market," Iversen says. "In the United States, the law protects the shareholder and equity values."

Maybe that's why the Germans haven't felt the Great Recession quite as painfully as the rest of us. ■

Lori Tripoli, J.D., is a freelance writer and editor based in Bedford, N.Y.

—Lori Tripoli

Get the labor and employment updates you need— when you want them with *CCH® Employment Law Daily*

A premium service offering daily emails and access to an online database, *CCH Employment Law Daily* provides the timely labor and employment case law updates and legislative developments required in today's environment.

You can customize your daily wrap-up email by choosing from 52 jurisdictions and a wide range of topics to receive the specific information you need most.

Employment Law Daily offers:

- Full summaries of federal and state supreme, appellate and district court decisions with links to full text
- Case stories that include judge and attorney names
- Federal and state law developments

- Same-day news—Daily wrap-up email arrives at the end of each day
- Ability to receive alerts of major developments when they occur
- RSS feeds
- Easy viewing capability on your smartphone or any mobile device
- Forward information to colleagues or clients with our special copyright permissions
- Links accessible from a mobile device

Get your free trial today—
Call 800-449-6435

 **Wolters Kluwer**
Law & Business

For more information, visit
employmentlawdaily.com