

EDITORIAL

PRIVILEGE ISSUES

It gives us great pleasure to introduce you to our fourth edition of the Compliance Elliance Journal (CEJ).

We are particularly pleased of a significant innovation, which accompanies our new edition. From now on the CEJ has an Advisory Board, consisting of Derek Six (Compliance Manager at DAW Group, Germany), Marcus Traut (Attorney at and Owner of Anwaltskanzlei Marcus Traut, Germany) and Kenneth Tung (Co-Founder and Chief Strategy Officer at In-Gear Legalytics Limited, China). We are glad that they are willing to support CEJ by their pushing ideas, suggestions and contributions. Thank you for deciding to join CEJ.

Moreover, Cheryl E. Zuckerman, who is a Professor of Legal Writing and Lecturer in Law and Annette Torres, who is a Professor of Legal Writing, both at the University of Miami School of Law, will be part of our team. As mentors they will support ambitious students, who strive for submitting their contributions for CEJ. We would like to thank you for supporting us as well.

You can read more about all of our new members under the section “Advisory Board”.

This edition starts with the authors Bernd Mayer and Nicola Zeibig. In their essay “In-house lawyer under the new German Legislation” they scrutinize the recent development regarding the professional regulations of in-house lawyers. Thereby they focus on the legislative process as happened in Germany. The authors show up the significant differences of the in-house counsel’s status before and after the legislative change within the Federal Lawyer’s act. Moreover they point out potential difficulties for in-house lawyers, now that the law for them has changed. Dilemmas as to terms of Independence and of professional secrecy are just two of them. The content of this paper was first presented at International Legal Ethics Conference VII in New York in 2016.

In our second piece, entitled “Company-internal Studies from the Public Prosecutor’s Perspective – A critical Analysis of 10 Years after Siemens”, Renate Wimmer deals with relevant questions all around internal investigations. Therefore she picks the famous “Siemens case” to function as thematic hook. She emphasizes the change in meaning from “foreign body” to “creature of habit”, which internal investigations have been undergone regarding the factual basis, whereas from the legal aspect internal investigations have not lost their status of being “foreign bodies”. Renate Wimmer examines

how the investigation authorities handle or should handle company-internal investigations and she discusses open legal questions as well.

Thereafter follows the critical depiction of the protection zone of legal privilege in German and US penal law in the article “The Enterprise in Testudo Formation” written by Hendrik Schneider. Based on the meaning of the legal privilege when it comes to Internal Investigations, the author outlines the existing differences of the legal situation in Germany on the one hand and the USA, where confidentiality is applied more generously, on the other hand. He thereby critically analyses why those differences cannot be proved sustainable and why the privileges should at least claim validity for the in-house lawyers in Germany as well. Moreover the essay contains solutions for Germany, in order to include in-house lawyers (so-called Syndikus) within the scope of the legal privilege. The content of this paper was first presented at International Legal Ethics Conference VII in New York in 2016.

Lastly, the student Luisa Andonie features the vulnerability of the United States taxpayers' confidentiality due to the United States Whistleblower Program's lack of adequate protections in its push for compliance.

With our best regards,



Michele DeStefano & Dr. Hendrik Schneider
Founders and Content Curators of CEJ