

# Compliance

Of Rules and Guidelines



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## Trust and Passion

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185 lawyers at ten locations across Europe are just one reason why we are among Austria's leading law firms.

The secret of our success is that we function as one team. We continually prove that our clients' trust in us is justified. And we complete our tasks with passion.

In order to provide our clients with tailored advice, we have consciously chosen to offer a broad range of services – nationally, internationally and across all legal disciplines. But we can only offer the full range if we have thorough expertise in each individual field. That is why we have developed special expertise in a wide range of legal areas. One of them is **Compliance**.

### About CMS

CMS Reich-Rohrwig Hainz is a member of CMS, which provides clients with specialist, business focused advice in law and tax matters. Our 4,500 legal professionals across the world, working in sector-based teams and trained in project management, are focused on our clients and their objectives. CMS lawyers operate in 73 offices worldwide, offering real-world advice to clients operating in a challenging business climate and a fast-changing regulatory environment. More information can be found at [cms.law](https://cms.law).

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# Compliance To-the-Point Advice

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The business world is becoming increasingly complex. Criminal law, antitrust law and regulatory requirements present companies with ever new challenges. To minimise business risks, companies require suitable and tailor-made concepts.

Compliance protects companies and the management because it increases sensitivity for doing business in consistence with the law. It protects the management from being accused of organisational negligence. Compliance helps avoid crises occurring due to real or alleged infringements of national or foreign law.

But compliance is meaningful even beyond that: if a crisis occurs, a well-working compliance system helps manage the situation. Following a breach of law, it helps the company stay in or return to business, for instance in preliminary proceedings or when addressing allegations. A successful compliance policy supports a company in avoiding and overruling bans on submitting tenders and in enforcing its rights as aggrieved party of a criminal offence.

## Compliance Advice at CMS

Through our full-service approach, we can provide you with legal support in all compliance-related matters, both as preventive advice and following an infringement of law.

We particularly focus on

- establishing, operating and revising compliance systems (including training measures and documentation),
- internal investigations, both in cooperation with investigating authorities and independent of proceedings by government agencies, and
- dealing with civil and labour law as well as criminal cases involving the misconduct of executives and employees as well as representing managing directors and members of executive and supervisory boards of a company in court proceedings.

The solutions we offer are comprehensive: in addition to our legal expertise, we also contribute our business know-how.

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# Investigations

## The Right Questions, Structures and Assessments

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Forensic investigations in an organisation may become necessary for many different reasons: whistleblowing (e.g. regarding misconduct, lack of due diligence, etc.), criminal or antitrust law investigations. In many cases, not only the parent company, but also its local and foreign subsidiaries are affected.

In forensic investigations, also called internal investigations when the initiated is a company, the original circumstances that led to the potential infringement are reconstructed. To this end, investigators collect relevant information in collaboration with company staff. An internal investigation presents a challenge to every company as it takes up many internal resources. For the success of a forensic investigation, it is therefore crucial to ask the right questions (which requires in-depth knowledge of the relevant legal rules) and to process the retrieved information and data in a structured manner. Subsequently a legal analysis is carried out. Particularly in large-scale investigations, the data are commonly reviewed together with an auditor specialised in forensic investigations. We frequently cooperate with auditors, who help us carry out efficient investigations.

We contribute our long-standing experience in investigations. For instance, we provided legal advice in one of the largest forensic investigations of an Austrian group (special investigation at Hypo Alpe Adria bank). Our lawyers have excellent project management skills, which are essential for handling internal investigations in a swift and resource-efficient way.

In forensic investigations we proceed as follows:

- Precise determination of the object of investigation
- Specific definition of the goals
- Determination of suitable/admissible methods of investigation
- Drawing up of a time and resource plan
- Support during a focused search for information by providing lists of relevant keywords
- Investigation interviews with employees to complement written documents
- Preservation of evidence admissible in court
- Legal assessment of investigation results, particularly in terms of corporate, labour and criminal law
- Support in drawing up a crisis communication plan, both for internal communication (employees, executive board, supervisory board, etc.) and for the public (media, business partners, etc.)





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## Compliance & Investigations at CMS Beyond National Borders

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The CMS compliance team is made up of experts from all relevant areas of law. Our legal advice goes beyond borders: with eleven European locations and our strong presence in Eastern and Southeast Europe as well as the global CMS network with 75 offices in 43 countries, we guarantee seamless cross-border cooperation with our clients and partner firms. If requested, we also support your business in the USA, where we have well-established relationships with specialised US law firms.

You will benefit from our comprehensive presence. Particularly in the event of so-called dawn raids, we make sure that one of our advisors suitable for your case is at your side as quickly as possible. In the field of antitrust law alone, we support you with more than 140 antitrust law experts at offices in 25 European countries and the well-established CMS Dawn Raid Network. We develop tailor-made action plans for the proper conduct during dawn raids. What is more, we put together response teams to immediately support you during preliminary proceedings conducted by authorities. This way we ensure efficient and successful support during dawn raids.

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# Experts and Areas of Expertise Proper Know-How for Every Challenge

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On the following pages you will find the right expert for your individual case.



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# Corporate Law, Executive Responsibility, Criminal Law

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Corporate law obliges the management of a company to guide and direct it, but also – along with the supervisory board – to supervise it. We have been actively involved in this field for many years. Benefit from our legal expertise and wide range of experience.



**Johannes Reich-Rohrwig**

Partner

**E** johannes.reich-rohrwig@cms-rrh.com

**T** +43 1 40443 1250



**Peter Huber**

Partner

**E** peter.huber@cms-rrh.com

**T** +43 1 40443 1650

Johannes Reich-Rohrwig, one of the leading lawyers in corporate and commercial law, advises groups, large companies, supervisory board chairpersons, board members and managing directors on compliance issues, related investigations and on prosecuting and defending claims for damages in civil and criminal proceedings.

Peter Huber primarily advises listed companies and their major shareholders on questions of executive responsibility and corporate governance.

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## Special expertise | illustrative cases:

- Examining potential compensation claims against board members and auditors of a group that lost several billion euros during the financial crisis
- Claims for damages against supervisory board members due to insufficient supervising practice
- Claim for damages against a chief accounting officer due to irregularities and research whether the managing director is partially responsible due to neglected supervision duties
- Prosecution of high-risk currency speculations constituting a breach of duty
- Defending board members of a stock company against several criminal allegations and compensation claims by the company based on alleged violations of duty
- Defending a board member against charges of insufficient and delayed reporting to the supervisory board and of budget overrun
- Dealing with acts of bribery by the management aimed at employees of clients
- Examining and prosecuting the misconduct by a board member of a listed company
- Assessing the responsibility of board members for not prosecuting potential claims, particularly arising from M&A transactions and an entitlement to the repayment of contributions
- Advising on how to deal with the findings of audit court reports
- Claim for damages against the managing director of the subsidiary of a listed company due to real estate transactions
- Assessing legal transactions between stock companies and people closely associated with supervisory board members

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# Allegations of Corruption

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Many recent compliance issues involve corruption allegations. Such allegations are often prosecuted by both national and international authorities. This is why corruption is a particularly hot topic for international companies.



## **Johannes Reich-Rohrwig**

Partner

**E** johannes.reich-rohrwig@  
cms-rrh.com

**T** +43 1 40443 1250

Johannes Reich-Rohrwig advises groups, large companies, supervisory board chairpersons, board members and managing directors on corporate compliance.

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### **Special expertise | illustrative cases:**

- Extensive experience in investigating alleged corruption (especially in an international context)
- Experience with the US Foreign Corrupt Practices Act (FCPA)
- Experience with the UK Bribery Act
- Advice on compliance and good conduct rules in companies (e.g. value limits and rules of conduct for invitations, gifts, sponsorship, etc.)
- Prevention of corruption in purchasing and sales
- Representing a consulting company in an investigation by the World Bank



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# Investigations

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Compliance issues often occur in crisis situations. Our experienced teams will support you during internal investigations and in developing solution strategies.

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**Alexander Rakosi**

Partner

**E** alexander.rakosi@cms-rrh.com

**T** +43 1 40443 4350

Alexander Rakosi headed the legal experts team in one of the largest forensic investigations of an Austrian group (special investigation at Hypo Alpe Adria bank).

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**Special expertise | illustrative cases:**

- Hypo Alpe Adria: forensic investigations in five countries
- Investigation of corruption allegations according to the FCPA in a major international group
- Advising on the UK Bribery Act issues
- Internal investigations concerning labour law aspects in many projects of large companies employing several thousand people
- Internal investigation of the business practices of a well-known cultural sponsoring organisation
- Developing data protection conditions for the use of preventive and repressive compliance tools, e.g. in internal investigations, whistleblower hotlines
- Investigating corruption allegations in the Eastern European subsidiaries of a US company
- Dealing with acts of bribery aimed at employees of clients

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# Labour Law

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The aim of most compliance investigations is to reveal the misconduct of employees. Investigations have to be carried out in consideration of the works council's right of participation laid down in the works constitution and with due regard to employee data protection.



**Christoph Wolf**

Partner

**E** christoph.wolf@cms-rrh.com

**T** +43 1 40443 2950

Christoph Wolf primarily advises companies in all matters of labour law that are handled in or out of court.

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## **Special expertise | illustrative cases:**

- Implementation of compliance systems
  - The Code of Conduct (CoC): important points to consider
  - Directives, employment contracts
  - Guidelines
  - Participation of the works council
  - Works agreements
- Internal investigations regarding labour and data protection law
  - Engaging detectives
  - Employment contract conditions
  - Works councils' right of co-determination
  - Dealing with employee and other data (e-mail monitoring, video monitoring at the workplace, internet use)
  - Possible penalties in case of violation
- Advising on labour law aspects of internal investigations in many projects of large companies employing several thousand people
- Search and analysis of employee data triggered by a reasonable suspicion in accordance with labour and data protection law

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# IT, Data Protection

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Information security in companies requires a holistic approach. Technical, organisational and legal aspects are closely connected.



**Johannes Juranek**

Partner

**E** johannes.juranek@cms-rrh.com

**T** +43 1 40443 2450

Johannes Juranek is a leading expert in technology, data protection and commercial law.

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## **Special expertise | illustrative cases:**

- Compliance with statutory requirements relating to data protection and data security, general data protection conditions for the use of preventive and repressive compliance tools (e.g. internal investigations, whistleblower hotlines)
- Compliance checks of IT-related legal provisions in organisations (e.g. internal control systems)
- Drafting and checking licence agreements for compliance software
- Review of the applicable law on data transfer within Austria and to other countries and for the transfer of sensitive data (e.g. health-related data)
- Conduct in the event of a data breach (e.g. informing the public)
- Compliance with recognised standards such as BSI or ISO
- Licence agreements for Basel II software and anti-money laundering software for a major Austrian bank
- Outsourcing projects in the banking and financial services sector: developing the data protection conditions for data transfer in Austria and to other countries
- Setting up whistleblower hotlines for several industrial clients
- Developing legally sound in-house data exchange processes via the e-mail system for an Austrian health services provider

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# Tax Law

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Compliance with tax law (tax compliance) aims at safeguarding that legal tax regulations are abided by and preventing tax-related liability risks for companies. Furthermore, it covers the avoidance of the risk of criminal charges, also in relation to tax offences, both for the company and the management.



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## **Sibylle Novak**

Partner

**E** [sibylle.novak@cms-rrh.com](mailto:sibylle.novak@cms-rrh.com)

**T** +43 1 40443 3750

Sibylle Novak is an expert in national and international tax law. The senior attorney is also a tax advisor.

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### **Special expertise | illustrative cases:**

- Risk analysis & developing tax compliance guidelines
- Rules of conduct in the event of tax audits and document screenings
- Training of staff and (foreign) management regarding tax rules
- Introduction of a tailor-made documentation system (e.g. transfer pricing, documents relevant for tax and social insurance purposes, documentation pertaining to subsidies and investment allowances)
- Foundation of permanent establishments abroad: dos and don'ts
- Voluntary disclosure by the company/management to avoid criminal charges for a tax offence
- Advising companies in the event of criminal proceedings against employees, claims for damages against staff who have misappropriated funds
- Compliance with customs regulations regarding the declaration of the customs assessment basis
- Analysing the risk potential of aggressive tax structures in the light of the continuously changing legal background in CEE (blacklisted jurisdictions, etc.)
- International group: analysing existing distribution structures in SEE including assessing tax risks, converting representative offices into permanent establishments, adapting existing transfer pricing and financing structures
- Global service provider: uncovering irregularities and incidences of bribery in the course of a tax audit, representing (innocent foreign) managers in the respective tax offence proceedings, orderly liquidation and withdrawal from the local market
- Uncovering considerable unapproved funds withdrawals by a shareholder-managing director in the course of a limited review, court proceedings to remove shareholder, voluntary disclosure to local tax authorities and isolation of unaffected segments of the company to continue customary operations



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# Antitrust Law, Public Procurement Law

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Compliance with antitrust requirements aims at preventing infringements of antitrust law, identifying committed mistakes and ensuring professional conduct in the event of raids to minimise the risk of damage.

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**Bernt Elsner**

Partner

**E** [bernt.elsner@cms-rrh.com](mailto:bernt.elsner@cms-rrh.com)

**T** +43 1 40443 1850

Bernt Elsner is among Austria's leading experts in antitrust and public procurement law.

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## Special expertise | illustrative cases:

- Supporting the compliance officer in building a functional and efficient compliance structure, drafting internal guidelines and policies
- Regular training of all affected staff members with regard to (i) horizontal and vertical restraints, (ii) merger control rules, (iii) abuse of market power, (iv) distribution law
- Training of proper conduct during raids (Dawn raid trainings)
- Compliance audits (internal investigations) to detect potential breaches of antitrust law
- Advising on the legitimacy of forming bidding consortia in public procurement proceedings
- Representing clients before federal competition and prosecuting authorities in cases of suspected agreements limiting competition in public procurement procedures
- Advising on and executing leniency applications

Across the entire CMS organisation, 140 antitrust law experts in offices in 25 European countries are part of an established dawn raid network. Our expertise in antitrust law, wealth of experience in internal audits and forensic data analyses and the close cooperation between the CMS firms help you ensure antitrust law compliance in the whole region.

## Public Procurement Law

Especially when bidding in narrow markets, companies are tempted to enter agreements that limit competition (bidding cartels). For this reason, not only high fines are imposed on such cartels but, as opposed to other types of cartels, they are also criminally sanctionable liable to prosecution.

CMS can draw on many years of comprehensive expertise in all questions of public procurement law, enabling us to spot detrimental developments and implement effective countermeasures at a very early stage.

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# Capital Markets Law

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Ever stricter compliance regulations apply to listed companies. They must develop and implement dedicated compliance structures that assure competitive laws and regulations.



## **Martin Zuffer**

Partner

**E** martin.zuffer@cms-rrh.com

**T** +43 1 40443 1950

Martin Zuffer advises leading companies, banks and financial institutions in regulatory issues arising in the field of banking and capital markets law.

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### **Special expertise | illustrative cases:**

- Issuer's compliance: fulfilling requirements of the Compliance Decree for Issuers of the Austrian FMA, which obliges issuers to implement an internal compliance organisation and fulfil related continuing obligations
- Advising various listed companies on questions related to ad hoc publicity and incidents significant in the light of insider-trading rules
- Fulfilling continuing obligations after a stock market listing
- Vast experience in advising listed companies on the Austrian Code of Corporate Governance
- Advising listed companies on safe harbour provisions in share buyback programmes
- Advising listed companies, shareholders and board members on publication requirements for certain share transactions and reporting obligations for directors' dealings

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# Intellectual Property (Unfair Competition Act, Media Law)

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Infringements of intellectual property rights can trigger criminal proceedings. Meticulous inquiries at an early stage can prevent this. In this respect, industrial espionage is on the rise: when competitors obtain knowledge of company or business secrets by fraud, they can be prosecuted by law. When a foreign company (including the EU) profits from the fraudulently obtained secret, the state itself brings charges.

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**Egon Engin-Deniz**

Partner

**E** [egon.engin-deniz@cms-rrh.com](mailto:egon.engin-deniz@cms-rrh.com)

**T** +43 1 40443 1550

Egon Engin-Deniz heads the intellectual property and media team at CMS in Vienna.

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## Special expertise | illustrative cases:

- Checking for IP infringements
- Patent similarity searches
- Patent and utility model searches
- FTO (freedom to operate) opinion
- Checking licence agreements
- Licencing
- Checking the chain of title for exploitation rights
- Legal consultation and representation during criminal and civil proceedings

Especially in the field of patent searches, we contribute many years of in-depth experience. In cross-border assignments, we cooperate with partners from a pool of 150 IP lawyers in 30 countries, offering legal advice in all jurisdictions our clients venture into.

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## Health Sector (Medical Law, Healthcare, Pharmaceutical Law)

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The health sector is governed by many regulations. Compliance checks by authorities have become stricter than before.



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### **Christoph Wolf**

Partner

**E** christoph.wolf@cms-rrh.com

**T** +43 1 40443 2950

Christoph Wolf is specialised in medical malpractice law, medical law, law pertaining to the healthcare professions, pharmaceutical law, litigation and dispute resolution.

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### **Special expertise | illustrative cases:**

- Checking and evaluating all institutions in the health sector
  - Compliance with regulatory requirements (e.g. regarding hygiene, Austrian Act on Medical Care Establishments)
  - Patient care
  - Implementation of in-house compliance guidelines
  - Advising on the execution of clinical trials
  - Assessing how to proceed in the event that services not rendered were billed
  - Medical products and pharmaceutical law stipulations
- In the event of the breach of legal rules applying to organisations
  - Suggestions for redress
  - Advice and support in pre-trial procedures
  - Litigation in civil and criminal proceedings (incl. the Austrian Federal Statute on the Responsibility of Entities for Criminal Offences)
- Anti-corruption law
  - Evaluating sponsoring packages and invitations by business partners to conferences
  - Examining research contracts, consultancy contracts, third-party funding contracts, etc.
  - Evaluating whether social events violate requirements of anti-corruption law
- Developing codes of conduct

We can draw on many years of experience in evaluating processes taking place in healthcare institutions. We also have vast expertise in litigation in the health industry, defending clients charged with organisational shortcomings based on the Austrian Federal Statute on the Responsibility of Entities for Criminal Offences and in civil proceedings.



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## Public Law

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Many specific requirements the compliance organisations of companies have to fulfil can be traced to public law. It overlaps often with many other legal fields presented in this brochure (data protection law, labour law, medical law, etc.)



**Robert Keisler**

Partner

**E** robert.keisler@cms-rrh.com

**T** +43 1 40443 2850

Robert Keisler is a public law expert at CMS.

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### Special expertise | illustrative cases:

- Product safety: advice on product regulations (which standards are applicable to production, examination and admission for use, labelling of products)
- Shopping hours: advising a food products group on the legal permissibility of extending opening hours
- Price labelling/hallmarks: advising an international luxury goods group on hallmarks and price labels for jewellery
- Austrian Postal Market Act: advising a delivery business on delivering addressed and unaddressed mailings
- Business facilities: checking whether companies abide by the stipulations of business facility permits
- Austrian Chemicals Act: advising on using, documenting and putting substances for sports equipment on the market
- Environmental law: advising on environmental impact assessments (EIA)
- Whistleblowing: advising a medical products manufacturer on the implementation of a whistleblower hotline

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## Compliance in CEE/SEE

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Austrian and international clients seek advice on compliance issues and forensic investigations. Benefit from the expertise our legal experts have gained in many years of advising in these fields in Eastern and Southeast Europe. With offices in Belgrade, Bratislava, Istanbul, Kyiv, Ljubljana, Podgorica, Sarajevo, Sofia and Zagreb as well as a Macedonian Desk, we support you in all compliance questions in a full-service approach.



### **Gregor Famira**

Partner

**E** [gregor.famira@cms-rrh.com](mailto:gregor.famira@cms-rrh.com)

**T** +385 1 4825 600



### **Radivoje Petrić**

Partner

**E** [radivoje.petrikic@cms-rrh.com](mailto:radivoje.petrikic@cms-rrh.com)

**T** +381 11 3208900

Gregor Famira heads our offices in Zagreb and Ljubljana and is a CIS-accredited data protection officer.

Radivoje Petrić heads the CMS offices in Belgrade and Sarajevo.

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### **Special expertise | illustrative cases:**

- Special investigation of the Hypo Alpe Adria banking group in CEE: forensic investigations
- Hypo Academy: compliance training of staff
- Examining contracts regarding antitrust compliance
- Examining labour law contracts in light of compliance with local labour law requirements
- Advising international companies regarding data protection compliance
- Assessing marketing materials of medical products regarding regulatory stipulations
- Examining agreements regarding compliance with anti-corruption laws

Please see our website at [cms.law](https://cms.law) for more information about us and our team.

# About CMS

CMS’ 4,800 law and tax experts in 75 international offices help organisations thrive in changing times. Through our technical rigour, strategic expertise and deep focus on building long-term partnerships, we are committed to putting our clients and their business success first.





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Further information can be found at **[cms.law](https://cms.law)**