

Siemens and the public sector

The change of employees between the public
service and the private sector

LC CO RG CL PL / LC CO RO CORP



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Problem

Also known as "revolving door" effect, the fast or repeated change between the public service (politics/ ministries) and the private sector is criticized in particular. Here, in the context of the representation of interest in politics and economy, there is a risk of:

- **Conflicts of interest,**
- partly **concerted abuse** and
- **influencing the legislation.**

This is done in particular by synergy effects, such as

- **Use of acquired,** targeted or friendly **contacts,**
- Securing **insider knowledge,**
- Incentive through **prospect of attractive jobs in the economy** and
- **labor and time savings** through ready-made, legally sound legislative proposals.

Check list

B. What to check (1)

Regardless of whether Siemens employees move to the public service or vice versa, be it on a temporary basis as part of exchange programs or for an indefinite time, the following principles apply:

- Thorough **subject and environment check** (previous activity - planned position) especially of former or current **contacts** to Siemens (e.g. in the context of award procedures) in order to avoid **conflicts of interest**.
- Transparent **selection process**.
- Clear and transparent **documentation** of the secondment.
- **Examination and maintenance of legal requirements** (e.g. Sec. 105 Federal Civil Servants Act (Bundesbeamtengesetz), laws on waiting periods, etc.); in this respect, if necessary, also obtain a confirmation that the hiring does not conflict with statutory, contractual or other legal obstacles and waiting period regulations from the previous function.
 - **Please contact Legal & Compliance for the assessment of local legal questions.**

B. What to check (2)

- If necessary, implementation of further internal **security measures** (e.g. circular).
- **Limitation of secondment time** (generally up to six months; in justified individual cases prolongation possible).
- **No assignment to drafting bills, to executive functions** or to those with final decision-making authority, to the awarding of public contracts and to functions whose exercise directly affects the specific business interests of the sending office.
- For inquiries on lobbying topics, the **Siemens communication principles** must be observed.
- Therefore always involve GM and CC, respectively, and please coordinate potential reactions with GM GA EU and LC CB GF.
- **In case of doubt please refer to your Compliance Officer or to Compliance Legal (LC CO RG CL).**

Legal provisions

C. Legal provisions in Germany – „Karenzzeitgesetz“

Statutory regulation since 2015:

- **Waiting period** for retiring members of the Federal Government as well as for parliament state secretaries to prevent **conflicts of interest** between the public service contract and employment after office.
- **Obligation to notify** the Federal Government or its responsible member in the event of the intention to take up employment outside the public sector within the first 18 months after leaving office.
- **Possibility of prohibiting intended employment** in case of possible interference with public interests.
- Limitation of the prohibition period to 12 to a maximum of 18 months.
- **In addition**, partly own waiting period regulations **at Federal State level**.

C. Legal provisions in Germany – Further regulations and BCG

- **Obligation to maintain confidentiality** on matters that have become known in office, e.g. in accordance with Sec. 6 of the Federal Ministerial Act (Bundesministergesetz “BMinG”).
- **Duty to disclose** a new lobbying activity for up to five years after leaving office for civil servants (judges, etc.), if the new activity is related to the previous activity. The administrative authority can then prohibit the new activity. Anyone who disregards this prohibition loses his pension rights, Sec. 105 Federal Civil Servants Act (Bundesbeamtengesetz “BBG”).
- In the extreme case possibly criminal **acceptance of benefits** (Sec. 331 German Criminal Code).
- Attention should also be paid to a breach of the internal **Siemens Business Conduct Guidelines**.

Note:

Even if the legally required waiting periods are adhered to, Sec. 331 et seq. of the German Criminal Code and the Siemens BCGs are to be observed.

An employment may not be offered or granted "in return" for the performance of the service.
Already the appearance of dishonesty is to be avoided.

C. Legal provisions worldwide (1)

➤ EU

- Members of the European Commission must notify the Commission of any intended professional activity which is to commence within **18 months** after leaving the office.
- Lobbying in former departments is completely prohibited during this time.
- Furthermore, the Commissioners are subject to a non-competition clause: if there could be conflicts of interest with the former area of responsibility, an ethics committee decides on compatibility.
- For other employees in EU-Institutions, a similar waiting period of **up to three years** applies.

➤ USA

- Waiting periods for mandate holders and staff members of the executive range from one year to **up to a lifelong** ban on certain activities.
- For the legislative, a different waiting period of one to **up to two years** applies.

➤ Czech Republic

- The **permission to take up** a position in the public service **must be granted by the employer**; the employment must not be terminated. However, there is no entitlement to remuneration during the exercise of the public office.
- After giving up/ leaving the public office, the employee has the **right to continue working** in a position of equal rank. The only exception would be the removal of the position in the meantime. If the employee is employed at a lower position, he would have to be fully compensated.
- Confidential information obtained during affiliation with the company or the public employer may not be taken into account at the other office.

Example relating to Siemens

D. Example relating to Siemens – Overview over the change of sides

- The change of sides for an **indefinite** amount of time is generally the rule.
- In addition, the **temporary** employment of company employees in German ministries is to serve the exchange of experience between politics and business.
- The exchange generally takes place either via the **staff exchange program "Seitenwechsel"** or via vehicles such as "**external staff**", "**posting**" or "**secondment**".
- The program "Seitenwechsel"* exists since 2004 between the private sector and the public sector.
- Since 2008 there is also an administrative regulation governing the use of "external employees" in ministries with a maximum secondment duration of six months.
- Payment usually by the sending office.
- However, such secondments are to be treated sensitively in view of an increasing social discussion.

*The goal was to "break down the existing boundaries between the sectors and enable knowledge transfer" as well as to "get to know the processes and structures of the other side" through the mutual exchange of employees from public and private sector; until 2006, however, only six participants.

D. Example relating to Siemens – Model case Philip Rösler for an indefinite change of sides

The former Health Minister Philipp Rösler was appointed to the Supervisory Board of Siemens' Healthineers in February 2018.

Background:

After leaving politics at the end of 2013, Rösler was appointed to the Board of the World Economic Forum in February 2014, where he was responsible for international relations. Since December 2017 he has been head of the Hainan Cihang Charity Foundation, the largest shareholder of the Chinese conglomerate HNA.

Result:

- Rösler's original change of sides to the World Economic Forum was hardly subject to criticism; waiting period regulations were not applicable at the time and there was no conflict of interest apparent.
- His most recent appointment to the Supervisory Board of Healthineers was no longer to be understood as a change of sides, thus, there was no increased reputational risk.
- Like all other persons in key positions – such as members of the Management or Supervisory Board – Rösler is publicly listed on the homepage featuring a short bio, see [Siemens Healthineers](#).