

BEING THE GENERAL COUNSEL IN A MULTINATIONAL'S HEALTHCARE BUSINESS DURING A PANDEMIC

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by Alessio Foderi

In 2014, when Elmar Büth joined 3M as general counsel of supply chain operations in Europe, Middle East and Africa, he wouldn't imagine to cope with a pandemic six years later. Also appointed general counsel to the business operations in 3M's East Region in 2016, Büth had served as corporate counsel Europe at manufacturing company Mettler Toledo from 2007 to 2014. Before moving to Switzerland, he also worked as an in-house lawyer for a group company of Deutsche Telekom in Germany and for law firms and institutions in Düsseldorf, Tokyo, Brussels and New York. Büth is also a faculty member at the CAS in-house counsel course offered by the University of Zurich.

His work for 3M includes plentiful acquisitions, divestitures and finance projects as well as successful litigations in some key cases. Anyway, as general counsel for the Healthcare Business in EMEA (role he has been covering since September 2018), this moment is pretty unique. That's why *Legalcommunity.ch* and [Mag decided to have a talk with him](#), to better understand how his role

is both crucial and mutable during this pandemic. The commitment of fighting the spread of Covid-19 by supporting healthcare workers worldwide is the core of his job, but it naturally includes many legal-related aspects.

What kind of impact is Covid-19 having in your daily work?

The pandemic determines my daily routine since several weeks. Some of the products we deliver are essential for workers in the healthcare sector such as surgical masks, respirators, filtration solutions and surgical gowns. Currently, I spend at least half of my day for Coronavirus related questions and calls.

Which specific activities does it include?

Well, this includes crisis management, business continuity and related communications, contractual questions, supply chain related inquiries, legal questions on government interactions, reacting to fraudulent activities involving our products and many more but, generally speaking, a myriad of issues that require to distinguish between business and legal risks.

What about fraudulent activities?

3M is receiving increasing reports of fraudulent and counterfeiting activities involving 3M products. We strongly condemn any unethical actions taken to exploit the global pandemic and work closely with the police and other authorities in countries all over EMEA to react appropriately.

In this moment there is a double challenge: protect employees and maintain operations around the world. What measure have you implemented concerning labour and employment?

Since the initial outbreak we have implemented global actions to restrict travel, limit (large) meetings and provide employees with information on how to help prevent the spread of the coronavirus – along with actions to take if employees become ill. Over the last few weeks our teams in EMEA have also adopted policies to enable employees to work from home. Across all of our manufacturing sites, we have established robust protocols for employee safety, cleaning and medical screening measures to help ensure safety. We are also working closely with local communities, public health authorities and plant leadership teams to reinforce safe operating practices.

As for contracts and force majeure?

We are analyzing and evaluating the effects of Covid-19 on contractual relationships of all sorts, as well as possible mitigating strategies that may need to be implemented. We are experiencing a significant rise in demand for supplies used to help protect people, such as respirators, by healthcare customers and government agencies and we expect demand for respirators and other supplies to outpace supply for the foreseeable future. We reviewed our supply contracts for critical clauses including the possibility to invoke *force majeure* provisions as well as the validity of force majeure claims made by counterparties.

As you mentioned, 3M is producing masks crucial in this pandemic, has something changed?

This pandemic is affecting us all and we are mobilizing all available resources. We are seeing an increased global demand for certain Personal Protective Equipment (PPE) – including respirators, masks, hand sanitizer, coveralls, and goggles. In order to respond to the demand, we have increased production at our manufacturing facilities around the world. Since the Covid-19 outbreak, 3M has doubled its global output of relevant respirators to an annual rate of over 1.1 billion per year. In addition, 3M is increasing its investments to expand its global capacity by over 30 percent in the next 12 months. We are also maximizing production of a wide range of other products used in the Covid-19 response globally including hand sanitizers, disinfectants and filtration solutions as the pharmaceutical industry works to find a vaccine to fight the virus.

What are the main legal implications of this situation?

All those actions lead to many legal questions, mainly related to communication, contracting and the evaluation of the ideal supply chain. The outbreak has indeed a direct impact on supply chains. As a result, many teams work every day on the full risk assessment and alternatives. This includes options when core supply chains are disrupted (e.g. alternative suppliers), but also evaluating solutions to face governmental restrictions including export restrictions in EMEA.

Looking ahead, do you feel that this pandemic might lead to significant changes in legal departments?

This pandemic affects all people and industries globally and I have not seen any crisis before which affected the work of so many lawyers in our legal group and probably in any company at the same time. Covid-19, and all of the work disruption it has caused, will not soon be forgotten by organizational leaders, shareholders and other stakeholders and will lead the way to be even better prepared for the future.

In details...

Preparedness plans, force majeure clauses and government affairs aspect may be some of the hot topics for years but if the crisis continues longer, data privacy questions and questions concerning the freedom of people in general may become the core of the discussion. In the long term, this crisis will likely change the way we face risks generally, and the approach in respect to the possibility of unpredictable crises and assessing their impact.

Another change you mention is remote work in the legal field: is this a threat or an opportunity?

Covid-19 developments have forced almost all 3Mers to change the working practices to working from home with immediate effect, to cope in real time with the evolving situation. Within 3M, all employees are encouraged or even required to work from home if they can effectively do so. My legal colleagues within the Healthcare Legal Team are spread over the world and working remotely was the norm already before the crisis. The interesting question is: how many people will become remote workers after the dust settles on Covid-19?

Are there specific projects you were working on before the pandemic to arrive?

There are multiple ongoing projects including the integration of 3M's largest acquisition in history and developing the EMEA healthcare legal team in EMEA. While the pandemic crisis requires many

resources, we work hard to support and enable business continuity all over EMEA and globally.

Till now, one tip to share that you've learned during this crisis...

Stay connected, don't buy into the hype, make everything that needs to be done and support colleagues, customers and family.