

Kapitel 3: Inhalt, Umfang und Grenzen

Die Mannigfaltigkeit der Einzelfälle, in denen die Treuepflicht zur Anwendung kommt – von unterschiedlichen Rechtsformen über unterschiedliche Strukturen innerhalb einer Rechtsform bis hin zu unterschiedlichen Ausgestaltungen innerhalb einer Gesellschaft –, machen es schwer bis unmöglich, einen konkreten Inhalt oder gar eine abstrakt-generelle Anwendungsregel zu bestimmen.¹⁷¹ Ebendiese Fülle und Vielzahl der möglichen Anwendung der Treuepflicht lassen diese als „Wunder-“ oder „Allzweckwaffe“ erscheinen. Es verwundert daher nicht, dass anscheinend jeder ein anderes Verständnis der Treuepflicht bzw. eine andere Herangehensweise an diese mitbringt. Dies führt zu einer recht uneinheitlichen bis willkürlich wirkenden Verwendung der Begrifflichkeiten „Inhalt“, „Umfang“ und „Intensität“ der Treuepflicht. Im Folgenden soll daher das hier vertretene Verständnis dieser Begrifflichkeiten erläutert werden.

Der Inhalt der Treuepflicht soll nach verbreiteter Auffassung immer nur für den jeweiligen Einzelfall bestimmbar sein.¹⁷² Gibt es also keinen einheitlichen Inhalt der Treuepflicht, stellt sich die Frage, ob es letztlich überhaupt *die* bzw. *eine* Treuepflicht gibt – oder handelt es sich möglicherweise um „kleinteilige, selbstständige, je nach Gesellschaft individuell und

171 *Fastrich*, in: Baumbach/Hueck GmbHG, § 13 Rn. 21; *Wiedemann*, FS Heinsius, S. 953; vgl. auch *Thole*, ZIP 2013, 1937, 1938; zur organschaftlichen Treuepflicht *Frodermann/von Eiff*, in: Frodermann/Jannott Handbuch AktR, 1.4.2 Rn. 173.

172 BGH, Urt. v. 14. Februar 2019 – Az.: IX ZR 149/16, BGHZ 221, 100, 109 = NJW 2019, 1289 = NZG 2019, 624 = ZIP 2019, 666; BGH, Urt. v. 9. Juni 2015 – Az.: II ZR 420/13, NZG 2015, 995, 997 = NJW 2015, 2882 = ZIP 2015, 1951; BGH, Urt. v. 9. Juni 2015 – Az.: II ZR 227/14, DNotZ 2016, 139 = BeckRS 2015, 15474 = GmbH-Stpr 2016, 189; BGH, Urt. v. 25. Januar 2011 – Az.: II ZR 122/09, NJW 2011, 1667, 1649 = ZIP 2011, 768 = WM 2011, 885; OLG Düsseldorf, Urt. v. 23. November 2017 – Az.: I-6 U 225/16, WM 2018, 564, 569 = ZIP 2018, 72 = NZG 2018, 297; OLG Zweibrücken, Urt. v. 27. Juni 2005 – Az.: 8 U 106/05, BeckRS 14014; *Fastrich*, in: Baumbach/Hueck GmbHG, § 13 Rn. 22 f.; *Lieder*, in: Michalski GmbHG, § 13 Rn. 155; *Seibt*, in: Scholz GmbHG, § 14 Rn. 76; *Haas*, in: Röhrich/Graf von Westphalen/Haas HGB, § 109 Rn. 12; *Klinke*, in: BeckOK HGB, § 105 Rn. 150; *Wilhelmi*, in: BeckOK GmbHG, § 13 Rn. 184; *Heidrich/Steinicke*, SanB 2020, 44, 46; *Fastrich*, in: Baumbach/Hueck GmbHG, § 13 Rn. 21; *Wiedemann*, FS Heinsius, S. 953; *Lieder*, DZWIR 2007, 292; vgl. auch *Thole*, ZIP 2013, 1937, 1938.

Unternehmensf Hrungspraktiken Inhalt Umfang Grenzen Angaben

Felix Heiß



Unternehmensf hrungspraktiken Inhalt Umfang Grenzen Angaben:

Unternehmensf hrungspraktiken. Inhalt, Umfang und Grenzen der Angaben nach § 289a Abs. 2 Nr. 2 HGB.

Felix Hei ß, 2015-06-18 Studienarbeit aus dem Jahr 2014 im Fachbereich BWL Unternehmensf hrung Management
Organisation Note 2,0 Fachhochschule Brandenburg Veranstaltung Int Corporate Governance Normen und Standards
Sprache Deutsch Abstract Die vorliegende Arbeit besch ftigt sich mit dem Thema Inhalt Umfang und Grenzen der Angaben nach 289a Abs 2 Nr 2 HGB Die Fragen die durch den Gesetzestext aufkommen sind was relevante Unternehmensf hrungspraktiken sind und wie diese identifiziert werden k nnen Zudem stellt sich die Frage welche Bedeutung der juristische Paragraph in der Praxis der Betriebswirtschaftslehre einnimmt und ob diese im Einklang zueinanderstehen Im ersten Schritt werden Unternehmensf hrungspraktiken wie sie vom Gesetz vorgesehen sind ermittelt Weiter wird in Gliederungspunkt 2.2 auf die Entstehung des 289a eingegangen und aus welchen internationalen Richtlinie dieser Paragraph geschaffen wurde Weiterhin wird der Frage nachgegangen welche Gesetze vor Schaffung des 289a gegolten haben Anschlie end wird der Geltungsbereich des Paragraphen eingegrenzt und die Arten von Unternehmen herausgestellt die ihre Unternehmensf hrungspraktiken offenlegen m ssen In Gliederungspunkt 2.3 befasst sich wo die Angaben nach 289a Abs 2 Nr 2 der betroffenen Unternehmen ver ffentlicht werden m ssen und somit f r den Bilanzleser zu finden sind 3 s Handelsgesetzbuch 289a In den Gliederungspunkten 2.4 und 2.5 wird der Umfang der Angaben sowie auf deren Grenzen und m gliche Spielr ume bei der Erstellung der Erl uterungen zu den relevanten Unternehmensf hrungspraktiken eingegangen Der Gliederungspunkt 2.6 befasst sich mit zus tzlichen zu beachtenden Punkten zu 289a unter anderem welche anderen Paragraphen in engem Zusammenhang stehen und welche Strafen bei Nichteinhalten der Vorgaben von 289a Abs 2 Nr 2 entstehen k nnen In Gliederungspunkt 3.1 wird aufgezeigt welche Bedeutung der Paragraph 289a in der Praxis hat und welche Informationen gro e Aktiengesellschaften die einen guten Ruf bez glich ihrer Compliance genie en wie Siemens Daimler oder Volkswagen angeben Auf die Anwendungsbeispiele in 3.1 folgt in Gliederungspunkt 3.2 der Abgleich zwischen der Praxisrelevanz des Paragraphen und der juristischen Vorgabe Aus den bisher gesammelten Informationen werden in Gliederungspunkt 3.3 m gliche Verbesserungsvorschl ge erarbeitet um 289a Abs 2 Nr 2 besser in die betriebswirtschaftliche Praxis zu integrieren Gliederungspunkt 4 beinhaltet eine Zusammenfassung dieser Arbeit inklusive eines Ausblicks f r die Zukunft

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