

CEP Magazine – June 2020

The tough Corporate Sanctions Act is on Germany's horizon

By Marcus Reischl and Christoph Skoupil

Marcus Reischl (marcus.reischl@gleisslutz.com) and Christoph Skoupil (christoph.skoupil@gleisslutz.com) are Associated Partners for Compliance & Investigations at Gleiss Lutz in Frankfurt, Germany.

In August 2019, Germany's Federal Ministry of Justice and Consumer Protection has unveiled the draft of a new Corporate Sanctions Act (*Verbandssanktionengesetz*), introducing corporate criminal liability in Germany. On March 6, 2020, the German government came to an agreement on final changes to the draft, and on April 22, it was published.^[1] Before the COVID-19 pandemic hit Germany, the law was to be adopted before the political summer break. Although this timeline is now being called into question by current developments, it is very likely that the new law will actually be enacted.

The bill will significantly change the landscape for compliance and internal investigations in Germany. In this article, we will provide an overview of the background to the new bill and the key changes it will bring.

The perceived insufficiency of the current law

In the agreement of March 12, 2018, the “grand coalition” currently ruling in Germany agreed to reorganize the corporate sanctioning regime. The coalition agreement states that the government wants to ensure that white-collar crime is effectively prosecuted and appropriately sanctioned. That is the reason for the reform of the law on sanctions for companies.

Under German law as it stands, corporate fines are generally limited to €10 million (exceptions exist for cartel and data protection laws). Although we have seen heavy fines being imposed in the recent past in Germany—for example, the €1 billion fine imposed on Volkswagen^[2] in the emissions scandal—those fines consisted mainly of the disgorgement of profits and included only a few million in actual sanctions.

This present situation, in which the worst-case scenario is that companies will have to forfeit their verifiable illegal profits (the turnover can only be disgorged in very exceptional cases) and pay an additional maximum of €10 million, is perceived by many as insufficient because it is a calculable risk for companies. In an organized environment with many decision-makers contributing to a business decision, the deterrent effect of individual criminal liability alone is arguably not enough.

The new draft law intends to address this perceived insufficiency.

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