

# German Federal Government Adopts Draft Bill on Associations Sanctions Act

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The German Federal Government has adopted the draft of a German Associations Sanctions Act ("VerSanG-E") which now bears the name "Law to strengthen integrity in business". The Federal Government has thus adopted the draft bill of 22 April 2020 proposed by the German Federal Ministry of Justice and Consumer Protection (BMJV) without any changes. Parliament (Bundestag) and the Representation of the German Federal States (Bundesrat) will now discuss the draft law and are expected to adopt it without major changes.

The new Act would, for the first time in Germany, provide an independent legal basis for sanctioning corporations and other associations in the context of corporate crimes. Under the current legal situation in Germany, associations can only be fined for offences committed from within in accordance with the Act on Administrative Offences (OWiG), but this has been subject to long-running debates in Germany and considered insufficient by the BMJV, as can be seen from the explanatory memorandum to the draft law. For example, under the current legal situation, there is a maximum fine of ten million euros regardless of the size of the association (which was considered insufficient by the BMJV with respect to large corporations). The BMJV also sees a lack of concrete and comprehensible measurement rules for association fines and considers it insufficient that there are no legally defined incentives for businesses which invest in compliance functions and which also demonstrate cooperation with the prosecuting authorities in internal investigations. Moreover, the BMJV considers it insufficient that offences committed abroad by a non-German national in most cases cannot trigger any fine for a corporation registered in Germany. Finally, under the current legal situation, the prosecution of corporate crime is solely at the discretion of the competent authorities, which in the opinion of the BMJV has led to inconsistent and inadequate sanctions.

Against this background, one of the core elements of the new bill is that the sanctioning of associations will be subject to the so-called principle of legality (*Legalitätsprinzip*), which provides for an obligation of the criminal prosecution authority to open an investigation if a suspicion of a criminal offence arises. Furthermore, the draft bill contains a significant increase in the sanctions framework and the possibility for the association of mitigating the sanction in the case of internal investigations and cooperation with the authorities - whereby persons acting in internal investigations must not at the same time be the defence counsel of the association concerned (which means a significant change, as up to now it was not unusual that the investigation firm also acted as defence counsel). Also, a corporation that has a registered office in Germany may in future - under certain conditions - be sanctioned for offences committed abroad even if German criminal law would not apply to the individual's wrongdoing.

These core elements were already included in the previous draft version of August 2019 and essentially remain in the final draft bill now adopted by the Federal Government.

As a result of the cabinet decision that has now been made, it seems certain that the bill will be passed during this legislative period - it is even possible that it will be passed very soon. In view of the much-discussed previous drafts of the bill and in view of the fact that the relevant ministries as well as the government parties have intensively coordinated in the run-up to the draft now adopted, fundamental changes to the Act in the further legislative process are not likely to be expected.

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