

# Company Sanctions Act

In their government coalition agreement, the political parties CDU/CSU and SPD settled for the introduction of a company sanctions legislation. In „white collar crime“, it wants to ensure a more severe penalisation also of companies that benefit from the misconduct of their personnel, as a matter of principle. Irrespective of all the reservations from business, science, consulting and jurisdiction against the draft, the government adopted the "bill to strengthen integrity in business" without amendments in June 2020. In the further procedure, also the Bundesrat (chamber of parliament representing the federal states) strongly criticized the draft. Although the federal government has signalled its willingness to examine the planned legislation in certain respects, it is unfortunate that the government has not taken up some essential points of criticism. Therefore, the current version remains in need of improvement.

### Strongly limited defence rights

An investigation obligation for public authorities intends to achieve a uniform nationwide prosecution of illegal actions by businesses - without the companies having adequate defence rights as in other criminal

proceedings. Moreover, there is the threat of draconian penalties of up to 10 percent of the whole group's turnover.

### Use reform need for more compliance

The VCI sees a general need to modernise the company sanctions legislation and has made relevant proposals together with the professional organisation of compliance managers. Legal measures should serve to promote a better corporate culture and to strengthen compliance in companies. At the same time, the opportunity should be taken to shape the sanctions procedure and the rights of those affected in a clear-cut and well-balanced manner.

However, the presented draft brings new legal uncertainty and thus also adversely impacts law-abiding companies, especially small and medium-sized enterprises. According to the draft, the misconduct of persons in management functions can very quickly lead to sanctions against companies - even if the company is not at fault in terms of organisation.

Therefore, the VCI continues to speak for major changes to the draft act and closely accompanies the legislative process.

## THE VCI IS CALLING FOR THE FOLLOWING

### Strengthen compliance systems

Above all, a company sanctions act should have incentives for strengthening the compliance systems in companies. For this reason, no sanctions should be imposed if a company has a basically functioning compliance system in place. Rather, there should be sanctions only in the event of a demonstrable deficiency in organisation. Furthermore, minimum requirements to compliance systems ("angemessene Vorkehrungen" / reasonable arrangements and precautions) should be laid down in the act so that it is foreseeable what is expected of companies. Also, the circle of management personnel whose misconduct can be attributed to the company should be limited.

### Maintain the defence rights of companies and fairly regulate internal investigations

The rights of the accused must be safeguarded for companies. This requires an effective protection of confidentiality for management and in-house lawyers by adequate rights to refuse to provide information, testimony and participation. Moreover, protection against seizure of documents from internal investigations should be introduced. The quasi-prohibition of giving internal investigations and defence in one hand critically restricts the rights of defence and must therefore be deleted. In addition, more balanced rules should be established on how the interests of employees and employers can be reconciled in internal investigations, especially with regard to the employees' obligations to cooperate.

### Reduce the level of sanctions

A level of sanctions of up to 10 percent of the group-wide annual turnover is clearly too high and should be significantly reduced. It is also inappropriate to base sanctions solely on turnover. The draconian sanctions framework should only apply to serious offences ("schwere Verbandstaten").