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Germany to transpose EU Whistleblower Protection Directive into national law

On 27 July 2022, the Federal Government adopted the draft bill submitted by the Federal Ministry of Justice for better protection of whistleblowers and for the implementation of the EU Directive 2019/1937 on the protection of persons reporting infringements of EU law. The draft bill will be forwarded to the Bundesrat (Federal Council/upper house) for comment and, following a rejoinder by the Federal Government, passed on to the Bundestag (lower house) for further discussion and approval.

Background

The EU Whistleblower Protection Directive of December 16, 2019 (Directive 2019/1937) on the protection of persons who report breaches of Union law is a call addressed to individuals working in either the public or private sector to report their concerns or suspicions about alleged breaches of EU law carried out by the bodies that are employing them. It establishes extensive protection against retaliatory measures taken against persons reporting breaches of EU law and who lawfully exercise their right to freedom of expression.

This Directive introduces minimum standards as it should be possible for Member States to introduce or maintain provisions which are more favorable to the reporting person, provided that such provisions do not interfere with the measures for the protection of persons concerned.

The European Commission has initiated an infringement procedure against Germany and 23 other Member States in the past for failure to implement the EU Whistleblower Directive. Said Directive has been on the EU agenda since 2019 and should have been transposed into national law in all Member States by 17 December 2021. The Federal Government is now launching its second attempt to implement the law.

Draft bill of a Whistleblower Protection Act

The Federal Ministry of Justice had already submitted a draft bill for the implementation of the Directive in Germany in December 2020. However, the legislative process could not be pursued further for lack of bipartisan agreement.

The present draft bill is aimed to improve the protection of whistleblowers effectively and consistently in Germany. Whistleblowers contribute significantly to the uncovering and punishment of wrongdoings. However, there have been repeated cases in the past in which they have been discriminated or harmed because of their activity or by disclosing malpractice. The Whistleblower Protection Act (*Hinweisgeberschutzgesetz*) is intended to strengthen their protection, which has been inadequate to date. The objective of the bill is to eliminate these disadvantages and give whistleblowers certainty by providing an appropriate legal footing for their actions.

Employers must set up internal reporting channels where the breach can be addressed effectively internally if at least 50 persons are employed there. Companies with up to 249 employees have until 17 December 2023 to set up their internal reporting.

The draft is, however, still subject to amendments and it is not clear at present when exactly the Whistleblower Protection Act will come into force as it needs the approval of both the Bundestag and Bundesrat.

Keywords

Whistleblowing