

# Corporate Liability in Germany | Overview

Previous legislative proposals offer a prospect of the upcoming reformation of corporate liability in Germany



Upcoming corporate liability legislation in Germany will include significantly higher sanctions for corporate crimes, but also strong incentives for Compliance Management Systems (CMS) as well as internal investigations

Current Legal Situation	Last German Draft Act on Corporate Liability (VerSanG-E)		Prospect
<p><b>German Administrative Offences Act (OWiG)</b></p> <p><b>Principle of Opportunity</b> Investigation of any criminal or administrative offences at the <b>discretion</b> of the prosecuting authority</p> <p><b>Scope of Application</b> <b>Legal violation</b> in various areas, e.g. animal protection, illegal employment, but also data protection, competition, compliance, financial crime</p> <p><b>Sanction Measures</b> max. 10 million euros (regardless of turnover)</p>	<p><b>Scope, Offenders and Offences</b></p> <p><b>Principle of Legality</b> Authorities <b>obliged</b> to prosecute upon suspicion</p> <p><b>Offenders</b></p> <ul style="list-style-type: none"><li>– Corporate* <b>management</b></li><li>– <b>Employees</b> if management could have prevented offence through (compliance) measures</li><li>– Actual perpetrator not needed to be known</li></ul> <p><b>Offences (Non-Exhaustive)</b> Prosecution of, among others, tax, property, competition and compliance offences</p> <p><b>Sanction Measures</b> Up to <b>10%</b> of global average (group) turnover</p>	<p><b>Measures to Mitigate Sanctions</b></p> <p><b>Compliance Mgmt. System</b> Procedures, techniques and measures aimed to identify risks and ensure regulatory conformity (CMS)</p> <p><b>Internal Investigations</b> Company provides a significant contribution to the clarification of the case, fully cooperates with the investigating authorities and ensures comprehensive documentation of all results</p> <p><b>Potentially Reduced Sanctions</b></p> <ul style="list-style-type: none"><li>– Sanction amount can be reduced by up to 50%</li><li>– No publication of sentencing</li></ul>	<p><b>Modernised Corporate Liability Rules</b></p> <p><b>Reform Outlook</b> Reorganisation of corporate liability has been agreed upon by the new government in Dec. '21</p> <p><b>Agreed Core Content</b> Significantly raised sanctioning fines, clear legal incentives for Compliance Management Systems and internal investigations</p> <p><b>Regulatory Context</b> Increased requirements for compliance systems due to rules on <b>supply chain due diligence</b>, <b>whistleblower</b> protection and codification of further <b>ESG</b> topics</p>

*\*VerSanG-E does not include legal entities with a non-commercial business purpose*