

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Legislative process for the German Whistleblower Protection Act enters a new round

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After the German Council (Bundesrat) refused to give its assent to the draft bill of the Whistleblower Protection Act (Hinweisgeberschutzgesetz, HinSchG) implementing the EU [Whistleblower Protection Directive \(2019/1937\)](#) ([summary of the Bundesrat's session dated 10 February 2023](#)), the German Government (Bundesregierung) decided to refer the matter to the Conciliation Committee at the beginning of April as constitutional concerns had been raised regarding the only slightly adapted draft bill.

Content of the Whistleblower Protection Act

The Whistleblower Protection Act should better protect whistleblowers, in particular from threatened disadvantages such as discrimination or consequences under employment law. Legal violations in companies and authorities are often first noticed by workers so they can considerably contribute to clarifying and avoiding further violations. Until now whistleblowers have received insufficient protection due to the lack of a unified system. The Whistleblower Protection Act therefore envisages that all companies with at least 50 staff and, regardless of the number of staff, all companies in the finance and insurance sectors, and public offices set up an inter-

nal reporting system which must follow up on information, provide information about the process and document this.

Critique by the Bundesrat

The Bundesrat criticised the protection of the Whistleblower Protection Act for being too far-reaching, as the directive's scope of application has greatly increased and therefore could lead to overregulation. Small and medium-sized companies who currently have more than 50 staff would be severely burdened by the costs associated with the internal reporting system and the amount of bureaucratic administration. In addition, the option of anonymised reporting may lead to misuse and the infringement of personality rights. Furthermore, there are concerns that employees might make false accusations in order to be protected from dismissal under the new Act.

Referral to the Conciliation Committee

The Bundesregierung and the Bundestag now have the opportunity to discuss a compromise with the Federal States (Länder) through the Conciliation Committee. If the Conciliation Committee proposes a change this must be first accepted by the Bundestag. The Bundesrat will

then put the amended proposed law to a vote. However, if the Conciliation Committee recommends to confirm the law, the Bundesrat must reconsider the original proposed law. Even if the legislative process is now entering a new round, it is not expected to fail, at least not on grounds of the EU law obligation to implement the Whistleblower Protection Directive.

Comments

Therefore the companies and authorities should already consider setting up internal reporting offices or ensure the proper configuration of existing internal reporting offices and familiarise themselves with the requirements of the previous draft bill, despite the delay in adopting the Whistleblower Protection Act and the existing uncertainties regarding its final version. More information can be found in our article "[The New Whistleblower Protection Act – An Overview](#)".

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Pia Pracht on +49 221 33660-524 or by email to ppracht@goerg.de. For further information about the author visit our website www.goerg.com.

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