

White Collar Defense and Investigations



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Germany Set to Quadruple Maximum Corporate Fines and Codify Statutory Sentencing Criteria, Using Environmental Reform as Vehicle for Broader Overhaul

Executive Summary

- **What's new:** The German federal government is planning to overhaul the central provision for imposing fines on companies under German law. Maximum corporate fines are to be quadrupled and, for the first time, statutory criteria for the assessment of those fines are to be codified. The federal government has taken an EU initiative to harmonize certain environmental-law provisions and used it as the vehicle for these fundamental changes to the core provision of German corporate liability.
- **Why it matters:** The amendments apply not only to environmental offenses but across the entire field of corporate liability under German law. The new statutory sentencing criteria expressly recognize a company's efforts to uncover wrongdoing and its compliance measures as mitigating factors. This means that a properly conducted internal investigation is now a mandatory consideration in the assessment of the fine, rather than something that prosecutors can take into account if they choose.
- **What to do next:** Companies operating in Germany should consider reviewing their compliance frameworks and internal investigation protocols. A properly conducted internal investigation will be central to obtaining leniency under the new statutory sentencing criteria — and, as recent practice shows, a deficient one can materially damage the company's position.

A New Bill on Corporate Liability

On April 20, 2026, the German Federal Ministry of Justice and Consumer Protection published a draft Act that is set to change, in a fundamental way, how Germany sanctions corporate misconduct. On its face, the Act does no more than implement an EU directive (Directive) on the protection of the environment through criminal law ([Directive \(EU\) 2024/1203](#)). Its substance, however, reaches well beyond the environment. Embedded in the implementing measures are amendments to Sec. 30 of the German Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten*, or OWiG), which substantially increase the maximum fines that may be imposed on companies in Germany and — for the first time in German law — codify the criteria for setting those fines. The changes go materially beyond what the Directive mandates.

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This alert analyzes the proposed amendments to Sec. 30 OWiG, places them in the context of Germany's longstanding debate on corporate criminal liability, examines the federal government's reasoning and outlines the practical implications for companies operating in Germany — in particular, the strengthened status of internal investigations as a factor that prosecutors will be required to weigh when setting fines.

Background and Current Practice

To appreciate the significance of the proposed reform, two features of German law must be kept in mind, both of which set Germany apart from most comparable jurisdictions: Germany has never enacted a genuine corporate criminal statute, and the instrument it does use to sanction companies — Sec. 30 OWiG — has long been regarded as inadequate to the task.

Germany's Stalled Path to Corporate Criminal Liability

Germany has no general corporate criminal law. Unlike almost all other EU jurisdictions, German law continues to adhere to the principle that a company cannot itself commit a crime. The reason is doctrinal: Under German criminal law, individual guilt (*Schuld*) is a foundational element of every offense, and guilt presupposes the capacity for moral self-determination — the ability to recognize the wrongfulness of one's conduct and to act on that understanding. A legal person, lacking that capacity, cannot bear guilt and therefore cannot commit a crime. This does not mean that companies escape financial consequences for criminal conduct. Courts and prosecutors have long been able to impose fines on companies — at times very substantial ones. That accountability is channeled through the regulatory offenses regime: Under Sec. 30 OWiG, a fine may be imposed on a legal person where a member of its management has committed a crime or a regulatory offense in the company's interest or in breach of duties incumbent on the company.

This route, however, has well-known shortcomings:

- First, the punitive component of a Sec. 30 OWiG sanction is currently capped at €10 million for intentional crimes and €5 million for negligent ones — figures widely regarded as too low to deter misconduct by large enterprises.
- Second, the statute offers no guidance on how the fine is to be calculated; there are no statutory sentencing criteria, and the assessment has been left to the discretion of the prosecuting authorities, producing uncertainty and uneven outcomes.
- Third, the legal framework for internal investigations remains largely unsettled. German law does not clearly regulate the position of employees questioned in the course of an internal

investigation, including whether, and to what extent, they may rely on the privilege against self-incrimination (notwithstanding their labor-law duty to provide information to their employer) and whether they are entitled to legal counsel during interviews. Nor does the statute specify the conditions an internal investigation must meet in order to count in the company's favor — in particular, whether the investigation must be kept organizationally separate from the company's criminal defense. These open questions leave companies and their advisers operating with considerable legal uncertainty.

None of this has gone unaddressed in the legislative arena — but every attempt at comprehensive reform has failed. The most recent was the proposed *Verbandssanktionengesetz* (Corporate Sanctions Act), developed but ultimately not adopted under the last Merkel administration (2017-2021).

Piecemeal Corporate Liability and Workarounds

In the absence of a general corporate criminal statute, German law has developed corporate sanctions in piecemeal fashion, principally where the European Union has harmonized criminal or regulatory rules in a particular sector. Sectoral sanctions of this kind exist, for example, under the Directive on the criminal-law harmonization of Union restrictive measures (Directive (EU) 2024/1226), the Digital Services Act, the Digital Markets Act and the General Data Protection Regulation. Outside those areas, Sec. 30 OWiG has remained the central instrument.

The limitations of Sec. 30 OWiG are best illustrated by the largest corporate sanctions. Because the punitive component is capped at a relatively modest level, prosecutors have routinely combined it with the forfeiture of unlawful proceeds (*Einziehung von Taterträgen*) — a separate and uncapped mechanism — to arrive at substantially higher sanctions:

- **Conglomerate.** In 2007 and 2008, the Munich authorities concluded two sets of proceedings against an industrial conglomerate arising from systemic bribery, imposing German sanctions of €201 million and €395 million, respectively. In the 2008 proceeding, only €250,000 of the €395 million represented the punitive fine; the remaining €394.75 million was disgorgement of profits.
- **Automaker.** In June 2018, the Braunschweig public prosecutor imposed a €1 billion sanction on a large automaker in connection with an emissions scandal. Only €5 million of that amount was the punitive fine — the statutory maximum for the negligent breach of supervisory duties on which the sanction was based; the remaining €995 million was forfeiture of economic benefit.

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- **Another automaker.** In October 2018, the Munich II public prosecutor imposed a €800 million sanction on a luxury automaker on the same basis — a €5 million punitive fine and €795 million in forfeiture.

In each case, the punitive element — the part of the sanction that actually expresses censure of the company — was marginal, and the headline figure was reached almost entirely through forfeiture.

This structure is a workaround, not a considered design. The calculation of the forfeiture amount has often resembled a negotiation between corporate defense counsel and the prosecution, conducted with limited statutory guidance and wide prosecutorial discretion. The draft Act addresses both weaknesses of the current practice — the low caps on fines and the absence of statutory criteria for determining the appropriate fines.

Key Aspects of the Reform

The draft Act makes three changes of fundamental importance to corporate liability in Germany: It quadruples the maximum corporate fine, it codifies — for the first time — the criteria by which corporate fines are to be assessed, and it does both across the entire field of corporate liability rather than for environmental offenses alone. The federal government's stated reasons for going so far beyond the Directive are addressed at the end of this section.

The Quadrupled Maximum Fines

The draft amends Sec. 30(2) OWiG so that the maximum fine that may be imposed on a company will be:

- €40 million in the case of an intentional crime.
- €20 million in the case of a negligent crime.

These figures represent a fourfold increase over the current maxima of €10 million and €5 million, respectively.

Notably, the new caps are not confined to environmental offenses. The Directive requires member states only to provide for increased fines in respect of environmental crimes. The draft Act, however, applies the new caps to every crime for which a company may be held liable under Sec. 30 OWiG. The federal government justifies this approach by reference to the desirability of a coherent corporate sanctions regime and the need to avoid inconsistencies with sectoral provisions that already permit substantially higher fines (see “The Federal Government's Goals and Purposes” below).

Statutory Sentencing Criteria for the First Time

Of equal — and arguably greater — practical significance is the new Sec. 30(2a) OWiG, which for the first time sets out, in statutory form, the bases and criteria for the assessment of corporate fines. Until now, the calculation of corporate fines has been governed by isolated sector-specific provisions (for instance, Sec. 81d of the Act against Restraints of Competition) and otherwise by case law and prosecutorial practice.

The new Sec. 30(2a) OWiG establishes three fundamental bases for the assessment of a fine:

- The significance of the underlying offense (*Bedeutung der Tat*).
- The reproach attaching to the company (*der die juristische Person treffende Vorwurf*).
- The company's economic circumstances (*wirtschaftliche Verhältnisse*).

In addition, the provision sets out a non-exhaustive list of factors to be weighed for and against the company, including in particular:

- The gravity, scope, duration and manner of commission of the offense, together with its culpable consequences.
- The motives and objectives of the individual who committed the offense.
- Prior offenses for which the company has been held responsible under Sec. 30(1) OWiG.
- The company's efforts to uncover the offense and to make reparation.
- Measures taken by the company, before or after the offense, to prevent and detect offenses for which it would be responsible.
- The consequences of the offense borne by the company itself.
- The size and earnings position of the company.

Although these factors are in part drawn from existing case law, their statutory anchoring marks a meaningful shift. Going forward, prosecuting authorities will be required to engage explicitly with each of them — including, importantly, the company's compliance posture and its conduct in the aftermath of an incident — when determining the appropriate fine.

The Federal Government's Goals and Purposes

The explanatory memorandum to the bill advances several reasons for going beyond what the Directive requires:

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- First, the federal government cites the need to avoid inconsistencies (*Wertungswidersprüche*) within the corporate sanctions regime — both between criminal and regulatory offenses and across regulated sectors. Certain provisions governing the financial markets already permit corporate fines of up to €20 million for negligent regulatory offenses, and turnover-based fine ceilings (*umsatzbezogene Bußgeldobergrenzen*) in other areas permit considerably higher amounts.
- Second, to prevent a “fragmentation” (*Zerfaserung*) of the sanctions framework, the government considers it expedient to apply the new caps horizontally, across the board.
- Third, the government invokes longer-standing calls for reform, including from the OECD Working Group on Bribery.

In practical terms, the result is what may fairly be described as a “corporate criminal law light” — introduced not through a dedicated reform package, but as a by-product of EU implementation.

Practical Implications and Outlook

For companies, the reform is not an abstract adjustment to a sanctioning statute. It bears directly on how enterprise risk should be assessed, how compliance programs should be designed and documented and — most immediately — on how a company should respond when potential misconduct comes to light. The changed status of the internal investigation is the clearest illustration.

The Strengthened Status of Internal Investigations

For corporate defense practice, the single most consequential change may be the new statutory recognition of compliance measures and internal investigations as mandatory considerations in the assessment of the fine.

Under existing law, internal investigations conducted in response to suspected misconduct have routinely featured in negotiations with the prosecuting authorities. The rigor of an investigation, the scope of any voluntary disclosure and the steps taken to remediate compliance failures have all influenced the eventual sanction — often with a significant downward effect. But whether, and to what extent, those efforts were credited remained, in substance, a matter for the discretion of the prosecuting authority and the negotiating skill of defense counsel.

The new Sec. 30(2a) OWiG changes this in two material respects:

- **Sec. 30(2a) sentence 3 No. 4 OWiG** lists “the efforts of the legal person or association to uncover the offense and to make reparation” as a factor to be considered.
- **Sec. 30(2a) sentence 3 No. 5 OWiG** lists “measures taken by the legal person or association, before or after the offense, to prevent and detect offenses for which it would be responsible” as a further factor.

The explanatory memorandum expressly states that voluntary disclosure (*Selbstanzeige*) and material cooperation in establishing the facts “will have a particularly significant” mitigating effect. Compliance measures put in place after the offense to remediate identified weaknesses are also expressly included.

For companies, the implications are concrete. A thorough and well-documented internal investigation is no longer merely a strategic asset in negotiations with prosecutors; it becomes a factor that prosecutors are obliged to take into account when setting the fine. The same applies to compliance measures, whether pre-existing or remedial. The conversation between defense counsel and the prosecution will therefore increasingly turn on how — rather than whether — those efforts enter the calculation.

The reverse is equally true: A deficient internal investigation can aggravate the company’s position. German media recently reported on a case in which senior management commissioned a law firm to carry out an internal investigation that later proved to be a fig leaf rather than a genuine inquiry. The board intervened and commissioned a second investigation — an “investigation of the investigation” — that reached fundamentally different conclusions. The prosecuting authorities treated the original, deficient investigation as an aggravating circumstance. The new statutory criteria sharpen that risk: Because a company’s efforts to uncover wrongdoing are now an express sentencing factor, an investigation that obscures rather than uncovers the facts typically will count against the company.

Two practical observations follow. First, the rigor with which an internal investigation is conducted, the manner in which it is documented and the speed of any remediation will bear directly on the financial outcome of an enforcement action. Second, the threshold decision whether — and when — to make a voluntary disclosure to the prosecuting authorities now has a clearer statutory anchor, even though it will continue to require careful assessment of the wider strategic considerations.

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Next Steps

The draft Act is expected to be formally adopted before the German parliament's summer recess in mid-July 2026. EU member states were required to implement the Environmental Crime Directive — the directive that prompted the bill — by May 21, 2026, and Germany is already past that deadline. Passage in substantially the proposed form appears likely, although amendments cannot be excluded during the parliamentary process.

Key Takeaways

Companies operating in Germany should, in particular, consider:

- Reviewing and documenting existing compliance frameworks against the new statutory criteria, with particular attention to the features most likely to influence the assessment of a fine.

- Reassessing internal investigation protocols — including escalation triggers, decision-making frameworks for voluntary disclosure and procedures for documenting remediation — and ensuring that any investigation is structured to withstand later scrutiny.
- Evaluating the implications of the substantially higher fine maxima for enterprise risk assessments and for any provisions or reserves.
- Where appropriate, addressing the new framework at board and audit-committee level as a matter of governance oversight.

The amendments to Sec. 30 OWiG may not, in formal terms, introduce a general corporate criminal statute. In substance, however, they bring German corporate sanctions practice meaningfully closer to one. Their implications extend well beyond the environmental sphere — and well beyond what the title of the implementing Act might suggest.

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