

The German Whistleblower Act: the never-ending story approaches its end, maybe

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Last April, the Federal Ministry of Justice in Germany published a draft bill – the Whistleblower Protection Act (*Hinweisgeberschutzgesetz/HinSchG*) – to implement its obligations under the EU Whistleblowing Directive. The legislation should have come into force by last Autumn, but there have been various delays and it now looks more likely to be Summer this year at the earliest before it comes into force.

In the latest development, the Federal Council (*Bundesrat*) rejected the current version of the German Whistleblower Act last month. It was critical of the fact the proposed Act goes beyond the requirements of the EU Whistleblowing Directive (in the scope of its application as well as the obligation to set up anonymous reporting line) and thus places legally unnecessary burdens on small and medium-sized enterprises. It is possible that the government could now call on the mediation committee to reach a compromise, but there are also calls from the coalition for a revised bill to be reintroduced to the elected German Parliament in a form that does not require approval, thus bypassing the *Bundesrat* altogether. What will happen next is a matter for speculation only, hence any suggested enactment days being little more than guess-work at this stage.

The European Commission does not want to wait any longer. It has referred Germany to the European Court of Justice in Luxembourg last month because it is not making sufficient progress with the implementation of the Directive. Germany is not the only country on the European Commission's radar; seven other EU member states have also been referred to the ECJ for not fully transposing the Directive according to a recent [press release](#).

Despite the delays, we would encourage companies which have not yet done so, perhaps in anticipation of the implementation of the Whistleblower Act, to launch appropriate internal whistleblowing channels now, (or as a minimum, to prepare structures which can be ready to go when the final position is known). Such is the pressure to get something onto the statute books in the face of the Commission's action that employers may not receive any very long period of advance notice when the time comes. Further details of the current version of the proposed legislation are contained in our previous [blog](#). **Stop Press:** The government introduced a new draft of the Whistleblower Protection Act to the Bundestag on 17 March. This does not require the approval of the *Bundesrat* because the regulations for civil servants are now omitted. The new draft is otherwise largely identical to the version passed by the Bundestag on 16 December 2022. The *Bundesrat* might

object, but the Bundestag could well choose to reject that objection and then the Act will finally pass.

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