

# Hogan Lovells Guide on Internal Investigations in Germany

2018



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## Guide on Internal Investigations in Germany – 2018

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## EDITORIAL

Dear Reader,

Compliance obligations and according internal investigations continue to be of major importance to internationally acting companies around the world. We have started focusing on compliance topics and according compliance investigations years ago. This has led to a vast amount of expertise of our team around the world.

For Germany, this guide shall outline some of the most important legal requirements and investigation techniques to be observed. It shall help companies avoid, prevent, and manage legal risks. The authors of the respective articles are all part of our specialized Investigations/Compliance Team in Germany.

We hope that this publication is of interest to you and provides a helpful overview on compliance topics in Germany.

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Please note that this guide is written as a general guidance only. It should not be relied upon as a substitute for specific legal advice. In the interests of readability, the masculine form has been used throughout, although both sexes are accorded equal importance.

### Further information

For further information on any aspect of this guide, please contact the authors (please see contact details **on pages 118/119**).







# 1. COMPLIANCE AND INVESTIGATIONS IN GERMANY

## General Overview and Trends in 2018

As with every **Hogan Lovells Guide to Internal Investigations in Germany**, we start this edition with a brief overview of the major developments in the past year and the trends that we have spotted in this timeframe.

2017 again was a very active year in the compliance and investigations field. Internal investigations by companies as well as external investigations by various regulatory authorities continue to be in the focus of the public. The trend continues that the authorities are taking a rigorous approach to enforce regulatory requirements. We continue to see a greater willingness of German criminal authorities to initiate investigations and to pursue more aggressive investigative measures such as an increased number of dawn raids and telecommunications surveillances. A new trend is the increasing number of dawn raids with a focus on the legal and internal audit departments of companies as well as external law firms.

As regards the latter, the Munich prosecutor's office raid of law firm offices as part of the investigations against a German car manufacturer are the most prominent case. The German Constitutional Court (Bundesverfassungsgericht – "BVerfG") has put the prosecutor's office access to the collected documents on hold in the interim. It remains to be seen which path German courts will take in this regard. The resolution of this question will be a milestone decision as regards the field of internal investigations in Germany.

In view of these developments, the law maker has now taken the initiative to provide additional guidance. The current draft of the coalition agreement of the Grand Coalition includes extensive plans to regulate investigations and extend sanctions for companies in case of white-collar crime. In addition to the increase of the sanctions based on a company's economic strength, the coalition agreement describes the abolition of the principle of discretionary prosecution.

In detail, the following significant changes and new regulations could apply:

In contrast to the past, the public prosecutor's office shall be legally obliged to initiate proceedings if there are sufficient grounds for suspicion – which would

result in additional workload on the law enforcement agencies.

Specific regulations on procedural dismissals shall be introduced. This could include the introduction of a clear framework for settlement discussions and agreements between companies and law enforcement agencies.

The maximum amount of corporate administrative fines is currently €10 million. In the future, it is intended to allow sanctions in the amount of up to 10 percent of the company's turnover for companies with a turnover of more than €100 million.

Sanctions are also planned to be "made public in an appropriate way".

Legal requirements for internal investigations "in particular with regard to seized documents and search options" shall be implemented.

"Legal incentives to provide information by means of "internal investigations" and the subsequent disclosure of findings obtained from internal investigations" shall be provided. This could lead to the introduction of clear rules and requirements on obtaining criminal discounts and reductions, following the example of other jurisdictions.

It is still unknown how the planned new regulations will be implemented in detail. The coalition agreement also does not contain any statements as to whether this would lead to an increase in capacities of law enforcement agencies. However, this is to be expected based on the new intended rules.

Moreover, we are expecting an increase of cooperation between authorities worldwide. With various investigations pending in the automotive industries, prosecutor's offices are increasingly in contact with foreign investigative authorities to exchange information.

Finally, 2018 will also see the entry into force of the new European Regulation on Data Privacy ("GDPR"). This will reduce the impact of local specifics in cross-border cases. On the other hand, potential penalties with substantially increase and rules will, in parts, be tightened. Given the potential exposure and the complexity of the issue, it is strongly recommended that expert data privacy counsel is made part of such

cross-border investigation team in all phases. In this Guide you will find extensive guidance on this aspect as well. As always, the **Hogan Lovells Guide to Internal Investigations in Germany** will address the most important new developments and present them in a concise and practical manner. The Guide includes "basics" to keep in mind when thinking about compliance or investigations as well as an information sheet that provides a brief and concise overview of the top ten developments of the past year.

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