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DICO Policy Paper on the Compliance Defense in the German Act against Restraints of Competition (ARC; Section 81d (1) sentence 2, items 4 and 5)

[Courtesy translation]

With the ARC Digitization Act, the German legislature recently codified for the first time that compliance programs are to be taken into account when determining the amount of (antitrust) fines. This provision - which was only included in the last few days of deliberation and despite many years of rejection by the German Federal Cartel Office - makes antitrust violations in Germany the first offenses for which such statutory regulations exist.

Nevertheless, numerous individual questions remain unanswered. This paper is intended to contribute to the discussion and clarification of the open questions. It is based on the relevant DICO publications. These particularily include the statement on the draft German Association Sanctions Act (hereinafter "**DICO Statement on the German Association Sanctions Act**"; Verbandssanktionengesetz), the DICO Guideline "Antitrust Compliance: Cornerstones for Effective Compliance Programmes" (hereinafter "**DICO Guideline on Antitrust Compliance")** and the DICO Working Paper "Model Antitrust Compliance Policy" (hereinafter "**DICO Model Antitrust Policy"**). For more in-depth information, the DICO Standard "Compliance Management Systems" can also be consulted. All documents are available on the DICO website or from the DICO office.

For quick reference, the **DICO positions** on the individual questions are **highlighted in gray below.**

I. Legal situation and comparison with the status quo ante

Section 81d (1) sentence 2 ARC[1] contains the following provision on the compliance defense (emphasis added by author):

> "*When determining the amount of the fine, account shall be taken of both the gravity and the duration of the infringement. In the case of fines imposed on undertakings or associations of undertakings for agreements, decisions or concerted practices restricting competition pursuant to Section 1 or Article 101 of the Treaty on the Functioning of the European Union or for prohibited conduct pursuant to Sections 19, 20 or 21 or Article 102 of the Treaty on the Functioning of the European Union, the circumstances to be considered shall, in particular, include:*
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> *[…]*
>
> 4. *previous infringements committed by the undertaking as well as any **adequate and effective precautions taken prior to the infringement to prevent and uncover infringements**, and*
> 5. *the undertaking's efforts to uncover the infringement and remedy the harm as well as **the precautions taken after the infringement to prevent and uncover infringements**."*

This means that the compliance defense of the German ARC comprises both, the pre-offense compliance (*Vortat-Compliance*), as well as the post-offense compliance (*Nachtat-Compliance*). Before the

[1] Through the remainder of this paper, norms without reference are norms from the ARC.

individual provisions are discussed in more detail, a brief comparison with the status quo ante should be made. This way, the new provisions can be placed into better context.

As already mentioned, there was a lack of statutory regulations on compliance defense in Germany before the GWB Digitization Act came into force. However, the German Federal Court (BGH) had ruled in 2017 that both pre-offense and post-offense compliance can play a role in the calculation of fines (ruling of May 9, 2017, Case No. 1 StR 265/16). In addition, in individual cases the German Federal Cartel Office had also considered post-offense behavior (detection efforts or compliance activities) when calculating fines (press release of the German Federal Cartel Office dated January 12, 2016, Bundeskartellamt sanctions vertical price fixing at LEGO (in German)).

However, the aforementioned BGH ruling originates from the area of tax law. In practice, there has been no transfer of the ruling to other areas of law – at least not to antitrust law. With regard to the aforementioned decision of the German Federal Cartel Office (LEGO), it should be noted that it involved a comparatively short vertical infringement.

Even though there have already been approaches in the past to take compliance programs into account in order to reduce fines**, the compliance defense in the ARC represents a fundamental change:** For **the first time, the defense** is **explicitly codified by law. In** addition, its scope and conditions of application are regulated comparatively clearly. By being enshrined in law, the compliance defense also has an important **signal effect,** not only in the direction of the German Federal Cartel Office, but also - and above all - in the direction of companies. Beyond its scope of application, it can also send an important signal for compliance with the law.

Despite the legal standardization, however, numerous **individual questions** remain unanswered. In the following sections, these individual questions are addressed (under **II.**) and placed in their national (**III.**) or international (**IV.) context.**

II. Unresolved individual questions on the Compliance Defense of Section 81d (1)

1. No exclusion of reduction of fines in case of "non-detection" or "non-notification" of the infringement

According to the wording of the law, a reduction of a fine can be considered if "*adequate and effective precautions*" were taken before or after the relevant act (Section 81d (1) sentence 2 no. 4 or 5). The wording thus requires an effort to prevent and detect infringements, but not a corresponding success. Nevertheless, the legal materials indicate that the compliance program in the specific case must have led to success, in particular to the discovery of the infringement and possibly even to the filing of a leniency application under Section 81i (1) sentence 1. For example, the German Federal Parliament (Bundestag or BT) **explanatory recommendation** on Section 81d (1) p. 2 No. 4 states that a fine-reducing consideration of compliance measures can "as a rule" only be assumed " if the measures taken have led to the **detection and notification of the infringement**".[2] Contrary to the wording of the provision, no reduction of fines would be possible in case of objective non-detection or non-notification of the infringement.

[2] BT-Drucks. 19/25868 v. 13.11.2020, p. 123.

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DICO summary position

- Contrary to the BT resolution recommendation on Section 81d (1) sentence 2 no. 4, the "**notification"** of an infringement should **not** be regarded as **a prerequisite for** a reduction of a fine (cf. below, Constellation 3).
- As also suggested by the BT resolution recommendation on Section 81d (1) sentence 2 no. 4, the **"detection" of** an infringement should likewise **not** be regarded as **a prerequisite for** a reduction of a fine (cf. below, Constellation 4).
- Even if this is not necessarily suggested by the recommendation of the Bundestag (for example, the recommendation lacks any comments on Section 81d (1) sentence 2 (5)), Sections 81d (1) sentence 2 (**4) and (5)** should be regarded as **independent alternatives of the law** (see below, Constellation 5).

In detail

For a detailed consideration of the question, a distinction must be made between the following five case constellations:

- **Constellation 1 - Detection and notification (as the first party to the cartel):** It is conceivable that a company already has an "*adequate and effective*" compliance program in place at the time of the infringement. If the infringement is detected through this compliance program and subsequently also notified to the Federal Cartel Office, the company concerned can already obtain full immunity from fines based on the notification (cf. Section 81k). A **reduction of a fine pursuant to Section 81d** would therefore in principle only be of **subsidiary importance.** This would apply, for example, to cases in which immunity from fines under Section 81k is not granted despite the fact that the infringement has been notified (e.g., because the company concerned forced other companies to participate in the cartel (cf. Section 81k (3)) or cases in which the leniency program is not applicable, and a notification is therefore not even possible (e.g., in the case of vertical restraints of competition).
- **Constellation 2 - Detection and notification (as second or further cartel participant):** It is also possible that a company has an "*adequate and effective*" compliance program in place at the time of the infringement, detects the infringement through the compliance program, also notifies the infringement to the Federal Cartel Office under Section 81i, but - because another company has already filed a leniency application - does not qualify for full immunity from fines but only for a reduction of fines under Section 81l. In this constellation, a **fine reduction pursuant to Section 81d** may be of **supplementary significance**, i.e. the fine reduction pursuant to Section 81l and the fine reduction pursuant to Section 81d would stand side by side (and would possibly be added together).
- **Constellation 3 - Detection and non-notification:** It is also conceivable that a company which has an "*adequate and effective*" compliance program in place at the time of the infringement, detects the infringement through the compliance program, but decides to merely stop the infringement and not report it to the Federal Cartel Office under Section 81i. In this constellation, the **question arises** - also with regard to the above-quoted passage from the explanatory r4esolution to the Act - **whether a reduction of fines pursuant to Section 81d** can be considered **at all due to the non-notification** (if the Federal Cartel Office learns of the infringement by other means). To this point**,** however, **DICO believes that** this should be **possible for** several reasons:

- Firstly, a corresponding requirement does not arise from the law. The law speaks only of "*arrangements*" for detection and notification, not of the performance of the relevant acts (detection or notification) per se.[3] Secondly, otherwise an obligation to file a leniency application would be introduced "through the back door." And thirdly, the reduction in fines was intended to reward the compliance efforts of the company in question. However, these efforts are independent of whether a leniency application is filed or not.

- **Constellation 4 - Non-detection and non-notification (existence of an "adequate and effective" compliance program):** It is also conceivable that a company has an "*adequate and effective*" compliance program in place at the time of the infringement, but that this program nevertheless failed to detect the relevant specific infringement. In this case, the **question arises whether a reduction of the fine pursuant to Section 81d can be considered at all due to non-detection**. **In DICO's view,** however, this should be **possible for** several reasons: Firstly, a corresponding requirement does not arise from the law. The law (section 81d (1) p. 2 No. 4) only speaks abstractly of "precautions to prevent and detect infringements" without specifically requiring detection. In this regard, the explanatory resolution to the Act also states that it does not "*speak against the seriousness of the effort to avoid antitrust infringements from the outset if an infringement [nevertheless] occurs*".[4] And secondly, the reduction in fines should reward the compliance efforts of the company in question. However, these efforts cannot guarantee that violations will be detected in every individual case. Even a "state of the art" compliance program is no guarantee of success for legally compliant behavior. If a corresponding "guarantee of success" were to be demanded, this would ultimately also reduce the incentive for implementing effective compliance programs because of the impossibility of achieving the goal. Irrespective of this however, this constellation may give rise to special features with regard to the amount of any reduction in fines (see in detail under 4.).

- **Constellation 5 - Non-detection and non-notification (non-existence of an "adequate and effective" compliance program):** Finally, it is also conceivable that a company does *not have an* "adequate and effective" compliance program and does not detect and notify the infringement - either because of the inadequate compliance program or for other reasons. In this constellation, no reduction of fines pursuant to Section 81d (1) sentence 2 no. 4 is possible in principle. However, the **question** arises - also with regard to the passage from the explanatory memorandum quoted above - as **to whether this (also) precludes a reduction of the fine pursuant to Section 81d (1) sentence 2 no. 5. In DICO's view** however, there should be no such blocking effect for several reasons: Primarily, a corresponding blocking effect does not result from the law. The law places both alternatives - i.e., pre-offense compliance under item 4 and post-offense compliance under item 5 - on an equal footing. In addition, the fact that post-offense compliance is considered in the reduction of fines also has a general preventive effect: ultimately, everyone benefits from the resulting strengthening of the compliance concept.

2. Requirements for "adequate and effective" compliance programs

Pursuant to Section 81d (1) sentence 2 no. 4, a compliance program that existed *prior to* the infringement can only be taken into account when calculating the fine if it was "***adequate and effective***". There is no corresponding qualification for post-offense compliance (cf. Section 81d (1) sentence 2 no. 5).

[3] BT-Drucks. 19/25868 v. 13.11.2020, p. 123.
[4] BT-Drucks. 19/25868 v. 13.11.2020, p. 123.

However, an interpretation based on meaning and purpose, among other things, suggests that an improvement of the compliance program to an "adequate and effective" level is required in this respect. Otherwise, there would be a contradiction in terms.

The law does not further define what specifically constitutes "adequate and effective" measures. The **BT explanatory recommendation** states in this regard that the word "adequate" is intended to take account of the fact "*that the type and scope of compliance measures typically depend on the size of the company*".[5] *The* measures and precautions required depend "*on the individual case and, in particular, on the type, size and organization of a company, the hazardous nature of the company's business, the number of employees, the regulations to be observed and the risk of their violation. In the case of small and medium-sized enterprises with a low risk of infringements, a few simple measures may also be sufficient; the "purchase" of a compliance program or certifications [is] in this respect regularly not necessary*".

DICO summary position

- DICO believes that it is sufficient for an "*adequate and effective*" compliance program pursuant to Section 81d (1) sentence 2 no. 4 if certain **cornerstones of** an antitrust compliance program are in place. An **audit or certification** in accordance with the relevant compliance standards, on the other hand, should **not be required -** as the explanatory resolution to the law also correctly states.
- The relevant **cornerstones of** a effective compliance program should in particular include the areas of leadership culture, responsibility and organization, risk analysis, regulations and training. For details, please refer to the relevant **DICO Guideline on Antitrust Compliance.**
- When **reviewing compliance programs, an overall view of** the program in question, based on documentation prepared by the company, appears to be purposeful.

In detail

In the meantime, many **relevant standards, guidelines and recommendations** exist for the area of (antitrust) compliance (see only the **DICO Standard "Compliance Management Systems"**). Specifically for the area of antitrust compliance - and with special attention to the potential consideration of compliance programs in the determination of antitrust fines - reference can also be made to the **DICO Guideline on Antitrust Compliance** (cf. above). This Guideline follows a **"cornerstone concept"** and focuses on criteria that are as pragmatic and specific as possible. Among other things, this is intended to take into account the fact that **certain contents of antitrust** compliance programs - such as details of the risk analysis and the handling of violations - cannot be **reviewed, or can only be reviewed to a very limited extent, by third parties such as antitrust authorities or public procurement agencies in view of the** sensitivity and confidentiality of the relevant information. In addition, the **relevant auditing standards** - for example IDW PS 980 - appear to be **too comprehensive for the** purpose of consideration in the assessment of fines, or the associated audits appear to be **too time-consuming.**

According to DICO's Guideline on Antitrust Compliance, the cornerstones of effective antitrust compliance programs include the **five areas of** leadership culture, responsibility and organization, risk analysis, regulations and training. In detail:

[5] BT-Drucks. 19/25868 v. 13.11.2020, p. 123.

- **<u>Leadership culture</u>:** The central cornerstone of an effective compliance program is a company-wide leadership culture with a clear commitment by management to compliance with the relevant antitrust laws ("*tone from the top*"). **Supplementary explanation according to the DICO Guideline on Antitrust Compliance:**
    - This commitment can be made, for example, by means of a **centrally placed message from** the company management on the company's intranet (which may also refer directly to the company's internal rules and regulations).
    - The management culture must also be "**lived" in** practice. Therefore, it is important and indispensable that the **company management** (also) regularly **participates in** antitrust **training**. Other important signs of a "lived" management culture are the provision of sufficient **material and personnel resources as** well as the examination or **taking of personnel consequences** (at least in the case of "*hardcore*" violations identified by the authorities).
- **<u>Responsibility and organization</u>:** Another important cornerstone of an effective compliance program is clear responsibilities and an appropriate organizational and reporting structure. **Supplementary explanation in accordance with the DICO Guideline on Antitrust Compliance:**
    - While the **compliance responsibility** in companies of all sizes ultimately lies (at least in part) with the **company management**, an **organizational structure** going beyond this is generally required (either independently or as part of another department such as the legal department) - at least within medium and larger-sized companies. At most, in the case of smaller and micro-enterprises, organizational compliance tasks can also be performed by the company management. Regardless of the precise structure of the respective compliance organization, however, **an expert contact person for** antitrust issues is required at least for SMEs and for larger companies (in the case of SMEs, an external lawyer can possibly also assume this function).
    - At least in the case of large companies, **an anonymous** whistleblower hotline should also be available (see also the provisions of the EU Whistleblower Directive).
- **<u>Risk analysis</u>:** A further cornerstone of an effective compliance program is a precise analysis of the (antitrust) risks relevant to the company in question. Such an analysis helps companies **identify** and **assess compliance risks in** connection with their business activities in the best possible way. **Supplementary explanation according to the DICO Guideline on Antitrust Compliance:**
    - In practice, the results of the risk analysis should then form the **basis for the specific design of the respective compliance program.** For **SMEs**, it may be sufficient in this context for the results of the risk analysis to be reflected in the **design of the internal regulations and the training content** or cycles. For **larger companies,** however, it is generally recommended to **systematically prepare and document the** relevant risks and to report on them in a suitable form within the company.
- **<u>Rules and regulations</u>:** An important component of effective compliance programs is also the existence of internal company rules and regulations with brief and comprehensible explanations of the **main antitrust regulations**, in particular the "hardcore" prohibitions. **Supplementary explanation in accordance with the DICO Guideline on Antitrust Compliance:**
    - The rules and regulations should explain the relevant regulations and their significance in a company-specific context, if possible, and also address the sanctions associated with violations.
    - This can be done, for example, in the form of short and easy-to-understand "**Dos & Don'ts" -** supplemented, if necessary, by business area-specific guides. To support **SMEs in** particular in the introduction of their rules and regulations, DICO has published the **DICO Model Antitrust Policy,** which can be used as an **exemplary set of rules and regulations.**

- The set of rules should be **communicated to** employees in **writing**, best in conjunction with a clear commitment on the part of management to conduct in compliance with antitrust law (see above under "Leadership culture").

- **Training:** Another cornerstone of an effective compliance program is regular **live** antitrust **training.** In view of advancing digitization, however, these trainings do not (or no longer) have to be conducted exclusively as face-to-face meetings - therefore here the adapted term of "live trainings". On the contrary, digital formats - e.g., via Zoom, MS Teams or comparable formats - or hybrid models are now also conceivable, provided there are sufficient opportunities for interaction. **Supplementary explanation according to the DICO Guideline on Antitrust Compliance:**
  - Through appropriate training, the relevant employees are not only made aware of the relevant regulations and their significance for the respective business area. At the same time, they are given the opportunity to **ask questions**.
  - This is also the reason why **e-learnings** should not be seen as an equivalent alternative to live trainings, but rather as a **supplement** - for example, to reach newcomers at short notice outside the regular training schedule.
  - As far as the **target group of** antitrust training is concerned, at a minimum the company management as well as employees with competitor contacts - supplemented, if necessary, by employees from the HR area - should participate in the training.
  - The **training cycle** should be determined depending on the risk profile and other training offerings - e.g., e-learning - of the respective companies. In principle, however, a **two- to three-year** training interval is recommended.

- **On the review of the key points:** In the context of the fine-reducing consideration of compliance programs, the special feature arises that the antitrust authorities (must) carry out a review of the respective programs. In this respect, an **overall review of** the program in question - possibly based on a points system in which points are awarded for the individual components and added up according to a predefined scheme - appears possible and appropriate. Without going into details and the significance of the **principle of official investigation** *(Amtsermittlungsgrundsatz)* **at** this point, the **burden of proof** - at least in **fact -** is likely to lie to a large extent with the **companies** concerned. They could provide the antitrust authorities with **documentation of their compliance program** - if necessary, with the help of external lawyers or management consultants - and submit supplementary documents on the management culture (e.g., the corresponding commitment of the company management), on the rules and regulations (e.g., the corresponding set of rules and regulations) and on the training courses (e.g., an exemplary training document as well as an anonymized overview of the training courses conducted, including the number and, if applicable, the area of activity of the participants). The **transmission of the risk analysis** and documents on internal monitoring, reporting and improvement, on the other hand, does **not** appear **appropriate or disproportionate** due to the particular sensitivity of the relevant documents - which could, for example, give rise to investigations by the antitrust authorities in other areas.

- **For more** details on the individual key points - as well as on the significance of the areas of monitoring, reporting and improvement, which are only of limited relevance in the present context due to their limited verifiability - see the **DICO Guideline on Antitrust Compliance** (section 3 (p. 6ff.)).

3. Exclusion of the reduction of fines in the case of the participation of management persons or bodies

According to the wording of the law, a reduction in fines can be considered if "*adequate and effective precautions to prevent and uncover infringements*" were taken prior to the infringement (Section 81d (1) sentence 2 no. 4). In this context, the question may arise as to whether the relevant precautions were effective at all if management staff or executive bodies of the company in question were involved in the infringement. The **BT Explanatory Recommendation** states in this regard that if "*the management (such as the board of directors of a stock corporation) or another person responsible for the management of the company of a legal person or an association of persons [was] itself involved in the infringement and it is thus clear that it does not itself stand behind the compliance regulations it has prescribed, their mitigating consideration [cannot be] taken into account*."[6] Because "*in this case [the] measures taken [were] not effective*".

In the **opinion of DICO, the involvement of management or executive bodies** should **not** lead to **a blanket exclusion from the reduction of fines.** Such an exclusion would - if at all - only be possible if the infringement involved **executive bodies, members of the board of directors of the association or personnel authorized to represent the association pursuant to Section 30 (1) no. 1-3 OWiG.** At any rate, there should be **no blanket exclusion of the reduction of fines for** all **management personnel below this management level** (at most a limitation of the amount, cf. below under 4.).

This is due to the following reasons:

- The **wording of the law does** not exclude the reduction of fines in the case of the participation of corporate representatives or management persons.
- In addition, a corresponding exclusion could (as a rule) be **circular**. Under Section 81a (1) ARC and Section 30 (1) OWiG, the imposition of a corporate fine requires the involvement of a corporate representative or a management person. If the reduction of fines were to be excluded for this case, there would no longer be any substantial independent scope of application for considering pre-offense compliance.
- Even with the greatest possible care, **"outliers**" - even at the level of the behavior of (individual) managers - cannot be ruled out with absolute certainty. In this regard, the explanatory recommendation to the Act also states that it does not "*a priori speak against the seriousness of the effort to avoid antitrust violations if a violation [nevertheless] occurs*". A certain reward - possibly limited in amount - for a company's compliance efforts should therefore also remain possible for this case.
- Even if the reduction of fines for *pre-offense compliance* were to be excluded in the case of the involvement of executive bodies or persons in charge, a reduction of fines for sufficient **measures of *post-offense compliance*** (Section 81d (1) sentence 2 no. 5) would still be possible. The law does not provide for a blocking effect; both alternatives are equally valid. Thus, in the event that the reduction of fines is excluded in the case of the involvement of executive bodies or management personnel, there could also be contradictions in value between pre-offense compliance and post-offense compliance.

[6] BT Drucksache 19/25868 v. 13.11.2020, p. 123.

4. Amount of the fine reduction

The law does not specify the possible amount of a fine reduction for sufficient compliance measures.

As a compliance association, **DICO** advocates the **largest possible** reduction in fines. At the same time, however, the relevant reduction must be in proportion to the severity of the relevant infringement. The determination of the maximum reduction that is possible in principle is ultimately a political-administrative decision that must also be made with regard to the evaluations of other laws or legislative projects and in consideration of the intended signal effect of compliance efforts. Irrespective of the amount of the fine reduction that is possible in principle, the following principles could be applied in the concrete calculation.

- Depending on the **quality of** the relevant compliance program (or the documents submitted in this regard), the antitrust authorities could make further differentiations within the possible reduction range. In this respect, it may be advisable for the antitrust authorities to take an **overall view** and develop an **evaluation or scoring scheme in** the future (cf. under 2.).
- In certain constellations - irrespective of the quality of the corresponding compliance program - **additional deductions** could also be considered. This could, for example, concern the case of **non-detection of an infringement** by a compliance program (cf. above under 1. Constellation 4), as well as **the involvement of management personnel** (cf. above under 3.).
- It is also questionable whether the same level of fine reduction should in principle apply for **post-offense compliance** as for pre-offense compliance. In DICO's opinion, it would be worth considering applying a reduced maximum value for post-offense compliance efforts. Otherwise, there would be only limited added value for companies to invest in effective compliance programs at an early stage, at least from the point of view of reducing fines. This is because in the event of a violation, it would be sufficient for the fine to be reduced if they began implementing a compliance program *ex post.* However, this would only do limited justice to the objective pursued with the introduction of the compliance defense - in particular the overarching signal effect for practice.

5. Other questions

Irrespective of the issues dealt with in this paper, further individual questions may arise in the present context - especially with regards to the varieties of offenses that go beyond the mere post-offense compliance of Section 81d (1) sentence 2 no. 5. This for example includes the question of the significance of the *company's "efforts to uncover the infringement"* and *"efforts to repair the damage" in* the assessment of antitrust fines (Sec. 81d (1) Sentence 2 No. 5 Alt. 1 and 2). These questions are **not the subject of this paper.**

In addition to these individual questions, complex issues may also arise regarding the *relationship of compliance defense to the "Guidelines for the Imposition of Fines in Antitrust Infringement Proceedings" of the German Federal Cartel Office or to the Leniency Program (cf. Sections 81h - 81n ARC).* These, too, cannot be dealt with comprehensively in the context of the present statement (but cf. on individual questions above under II. 1. Constellation 1). In DICO's view, the **compliance defense** should essentially constitute an **additional incentive for** companies that merely **supplements** the **existing instruments** but does not restrict them.

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III. Relationship to other laws or legislative projects

There are currently various laws and legislative projects in which compliance programs play a role. In addition to the relevant context of antitrust fine law, this primarily concerns the draft of the **Association Sanctions Act** and the **Competition Register Act** *(Wettbewerbsregistergesetz)***,** and the relevant regulations and guidelines. In this respect, **DICO** has advocated from the outset for the most uniform possible requirements for compliance programs and has published corresponding **statements** - in particular also for the Association Sanctions Act (cf. the **DICO Statement on the German Association Sanctions Act**). In **DICO**'s view, it would also make sense for the legislature to establish **legal guidelines** for effective compliance programs (see DICO statement "*DICO calls for a unified approach to corporate ethics instead of patchwork and salami tactics*" dated March 31, 2021 (available in German only)).

IV. International harmonization

In an increasingly digitalized world, national laws must also increasingly fit into the **international context** so as not to create a high or disproportionate burden for companies. In addition to Germany, numerous countries now have regulations on the fine-reducing significance of compliance programs (including the USA, Italy and Spain). **DICO** welcomes the fact that antitrust compliance issues are now also being discussed at the international level - for example within the *International Competition Network* - and is happy to contribute to the corresponding discussion process.

About DICO:
DICO - Deutsches Institut für Compliance e.V. (German Institute for Compliance) was founded at the instigation of leading compliance practitioners and experts and, as a non-profit association, has representatives from all sectors in Germany, including well-known DAX companies, consulting firms and representatives of academia. DICO sees itself as an independent interdisciplinary network for the exchange between business, science, politics and administration and sees itself as a central forum for the consistent and practice-oriented promotion and further development of compliance in Germany.

DICO defines minimum standards in this area, accompanies legislative projects and at the same time supports practical compliance work in private and public companies through guidelines and working papers, promotes training and further education and develops quality and procedural standards.

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