

## Self-disclosure in German Foreign Trade Law – worth the effort

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Since the Federal Ministry of Justice and Consumer Protection presented a new draft of the corporate sanctions law ("[Gesetz zur Stärkung der Integrität in der Wirtschaft](#)") on 22 April 2020, debate has flared up again about how to deal with legal violations within companies. In the past, associations and experts urged that the main objectives of the new law must be to promote compliance measures and transparency around violations within companies internally.

One way to help companies build the "golden bridge" back to legality is to offer the opportunity for voluntary self-disclosure, which would release the companies from sanctions. The current draft of the modern corporate sanctions law does not contain such a provision. Although the legislation rewards cooperative behaviour by companies, it does not provide for full exemption from sanctions. In other areas, however, self-disclosure is an established instrument.

### **Hesitant use by the companies**

In foreign trade law, Section 22 (4) of the Foreign Trade and Payments Act (AWG) has since 2013 offered companies the possibility of making a voluntary self-disclosure exempting them from fines. For certain negligent infringements that are discovered through self-monitored procedures, companies may obtain an exemption from fines by voluntarily notifying the competent customs authorities. However, German companies have so far been rather reluctant to make use of this offer. Many companies that have dealt with an internally discovered foreign trade law violation in the past still have no experience with self-disclosure as set out in the AWG. This does not reflect the importance of the voluntary self-disclosure scheme for business activities.

### **Usually high chances of success**

Companies should not be afraid of proactively approaching customs authorities. The fear of "waking sleeping dogs" and causing even greater damage by making a voluntary disclosure is often misplaced. In fact, carefully prepared self-disclosure usually receives a positive response from the side of the authorities. The scenario in which violations are not voluntarily disclosed but are then brought to light by experienced auditors in the course of an official external audit are much more unpleasant. Sooner or later such an audit will affect at least every larger company. An appearance of reliability is also prerequisite for many customs and foreign trade law facilitations, such as collective authorisations or the application for AEO status. The integrity of a company's conduct further influences the impression it makes on potential business partners.

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## **Fast and thorough action is essential**

Even if voluntary self-disclosure is no panacea, companies should at least always consider it. In case of doubt, it is important to act rapidly because as soon as the authorities discover the infringement, the voluntary declaration can no longer have its full legal effect. Companies should not shy away from a thorough investigation of the facts and comprehensive presentation of its infringements. To do so can set a company on course for successful self-disclosure and, not least, show that future conduct in conformity with foreign trade law is not an empty promise.

BLOMSTEIN advises on all questions relating to foreign trade law compliance. [Roland M. Stein](#) and [Leonard von Rummel](#) are happy to assist you at any time.