



## Factsheet: Internal Whistleblowing procedure at ICLEI

### Background

The "Act for Better Protection of Persons Providing Information (Whistleblower Protection Act - HinSchG)" was passed by the Bundestag in Germany on 11<sup>th</sup> of May 2023, and approved by the Bundesrat on the following day. It came into effect on the 2<sup>nd</sup> of July 2023 and applies to SMEs from the 16<sup>th</sup> of December of the same year.

**Purpose of the law:** This act is aimed at providing protection to individuals who have obtained information about violations in connection with their professional activities and report or disclose them. It covers employees, trainees, interns, and even those whose employment has ended. The act includes provisions to protect whistleblowers from reprisals, such as unjustified disadvantages or harm in their professional context.

### Scope of application

- **Who?** All employers with **at least 50 employees** must establish internal reporting offices, while certain employers, such as credit institutions and insurance companies, must establish them regardless of the number of employees.
- **What?** The law is very broad and covers three kinds of legal infringement:
  - **ALL criminal felonies** (Art 2.1(1) HinSchG ), serious crimes usually punished by imprisonment
  - **Misdemeanors**, (Art 2.1(2) HinSchG) minor crimes that are punished by penalties or fines, for infringing regulations on:
    - Health
    - The protection of the rights of employees or their representative bodies
  - **Violation of the following Regulations (Art 2.1(3 et seq.) HinSchG) in any cases (highlighted in yellow are areas of special interest for ICLEI):**
    - Money Laundering & Financing Terrorism
    - Transport (rail regulations, road safety, maritime transport regulations & aviation safety)
    - Environmental Protection Requirements
    - Promotion of the use of renewable energy and energy efficiency
    - Food safety
    - Consumer Rights and Consumer Protection
    - Protection of Personal Data for everything as well as Privacy and Confidentiality for electronic communications
    - Right of Shareholders
    - Audit of companies of public interest
    - Tax violation
    - Public Procurement rules
    - Financial fraud or violation affecting the EU
    - EU Competition laws
- **How?** German based companies need to set up a reporting system allowing for reports to be made orally or in writing, and it acknowledges receipt of reports within seven days. They also need to inform their employees that they can also report directly to external reporting offices at various federal and state agencies depending on the violation reported (e.g. BarFin for Finance,





Bundeskartellamt for Competition, Bundesamt für Justiz for the rest). The German Government and the Länder might, at a later stage, create new external reporting entities.

## **Procedure**

### **Step 1: Misconduct is reported**

### **Step 2: Acknowledgement of receipt and eligibility check is done within 7 days**

### **Step 3: Investigation from focal point from the office concerned take place**

### **Step 4: Facts of the situation are established and consequences/remedies agreed**

### **Step 5: Communication of results**

Both ICLEI World Secretariat (WS) and ICLEI European Secretariat (ES) operate under Article 14(2) HinSchG which allows private employers with 50-249 employees to operate a joint system.

As a result, when a whistleblowing complaint is sent to the WS-ES Internal Reporting Unit the focal point from ES points will receive and review complaints about WS and the focal point from WS will do the same for ES. This allows the reviewers of the complaints to be fully independent from reporting lines within WS and ES. However, in accordance with Article 14(2) HinSchG, the obligation to take measures to remedy the violation reported and the obligation to provide feedback to the person who provided the information (if not done anonymously) remains with the individual employer, while this second part will be carried on through the relevant focal points. Therefore, while the reception of the reports and the eligibility assessment might be done together by the focal points from ES and WS, the investigation and the search for remedy will only be done separately by the focal point of the office concerned.

The eligibility of a whistleblowing complaint is assessed by answering the following questions:

1) Is the whistleblower an ICLEI Staff?

The whistleblowing Act only applies to employees, trainees, interns, interim workers, in-house consultants doing the same work as an employee, but also to those whose employment has ended. Non-ICLEI Staff whistleblowing complaints will not be taken into account and shall be addressed to the [ICLEI Complaint Mechanisms](#) instead.

2) Do the facts reported in the whistleblowing complaint violate one of the German or EU Law mentioned in the HinSchG ?

Ensure the complaint relates to a breach of specific German or EU laws listed in the HinSchG, such as money laundering, product safety, environmental protection, consumer rights, data protection, financial services, or tax law, etc (full exhaustive list on Page 1 and in the complaint form). Complaints from ICLEI employees that are not within this scope shall not be taken into account, however, there might still be receivable by other ICLEI conflict resolution such as the respective Works Council (Betriebsrat) from ES and WS, the Group of Trust from WS (e.g. for Harassment) or the [ICLEI Complaint Mechanisms](#).

3) Assess the Plausibility of the Report:

Evaluate the credibility and plausibility of the information provided in the whistleblowing complaint. The whistleblowing complaint should contain sufficient details to warrant further investigation and should not be based on information that are known or suspected to be false, falsified or misleading.