



# Corporate Control Through External Whistleblowing: Initial Findings from Germany

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## Abstract

In Germany, whistleblowing was only regulated and institutionalized after a long, tough political debate. This transpired solely due to the country's obligation to comply with EU law and its legal obligation to implement EU Directive 2019/1937. As a result, structures were created to stimulate external whistleblowing and to use these new mechanisms as a central instrument of corporate control. The extent to which this concept is being realized in practice is the subject of the present article. A thorough examination of the reports received by the central German reporting body shows that only few corporate crimes have been detected and sanctioned through external whistleblowing so far. Limited willingness to report, competition with internal reporting systems, as well as intensive protection of the confidentiality of whistleblowers, are some of the main reasons for this situation as suggested by the present study. Consequently, legal policy expectations towards external whistleblowing should be adapted.

**Keywords** External whistleblowing · Public law enforcement · Regulation · Detection rate · Corporate crime · EU directive 2019/1937

## Introduction: External Whistleblowing as a Regulatory Component

### a) The Institutionalization of External Whistleblowing in the European Union

There are different ways in which the state can deal with corporate crime (for an overview, see Baldwin et al., 2011). Often, various meta-regulatory and self-regulatory approaches are used in which companies are encouraged to take internal preventive and reactive measures. In addition (alongside “private law enforcement” by non-state actors) mechanisms of

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corporate control through state intervention and sanctions always come into play – whether in more administrative procedures or in the form of “command and control” techniques (including criminal prosecution).

However, the effectiveness of deterrence and sanction strategies is often severely limited (Schell-Busey et al., 2016; see also Braun & Mueller, 2025). The reasons for this lie not least in the considerable problems in detecting corporate crimes (e.g. because of the inaccessibility of internal organizational processes for outsiders, the intertwining of illegal practices with legal business activities, or the difficulties in determining victimization and damage). The performance of the existing control techniques (e.g., monitoring, inspections, documentation and reporting requirements for companies) is often insufficient (see the data in Dyck et al., 2010), and the actual probability that corporate crimes will come to the knowledge of the authorities is therefore low, at least for certain types of offenses (see the calculations in Lynch et al., 2016, 1100). Since many criminal cases remain undetected, the actual volume of corporate crime clearly exceeds the number of cases recorded (informative extrapolations in Soltes, 2019; Dyck et al., 2024; on the considerable gaps in official data despite the considerable number of cases, see Simpson, 2019, 191 ff.; for Germany, see Walburg, 2015).

Considering this, whistleblowing is seen as a promising tool for at least partially shedding light on this dark field. Whistleblowing is “the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action” (Near & Miceli, 2016). It occurs in internal and external variants, in that it is directed either to internal company departments<sup>1</sup> or external actors (authorities, media, civil society organizations). If these addressees attempt to systematically activate such reports (usually by providing reporting channels, confidentiality guarantees and protection against reprisals, and possibly also through financial and other incentives), whistleblowing is integrated into a regulatory arrangement (Pemberton et al., 2012). It then serves as an important means of gathering offense-related information required for preventive or reactive measures.

EU law follows this approach and – in strengthening state law enforcement against companies – has implemented legal obligations to operate reporting offices for certain economic sectors.<sup>2</sup> The so-called Whistleblowing Directive (EU Directive 2019/1937; hereinafter “Directive”) has now generalized this concept and extended it to broader areas of society. The Directive obliges EU member states not only to ensure that all organizations of a certain minimum size offer the possibility of internal whistleblowing. Rather, they must also enable external whistleblowing through appropriate facilities. The Directive also includes other relevant provisions such as the right to choose between internal and external reporting, confidential treatment of reports, and the protection of whistleblowers from disadvantages and retaliation. With these regulations, the Directive is coming closer to the ideas of NGOs (see, for example, Transparency International, 2013) and links in terms of content to the

<sup>1</sup> We should only speak of whistleblowing here if the internal report is made outside the official and regular information channels. However, this is often handled differently in empirical research (cf. Bjørkelo, 2016).

<sup>2</sup> Cf. Article 71 Directive 2013/36/EU, Article 73 Directive 2014/65/EU, Article 61 Directive (EU) 2015/849, Article 35 Directive (EU) 2016/97, Article 32 Regulation (EU) 596/2014, Article 140 Regulation (EU) 2017/625.

whistleblowing laws that have long existed in the US and some EU Member States, as well as the case law of the ECtHR (for more details on these connections, see Gerdemann, 2024; further Abazi, 2021).

## b) The Institutionalization of External Whistleblowing in Germany

Whistleblowing is often described as “positive” or “useful” deviance (Vadera et al., 2009; Lewis, 2011) because it uncovers organizational wrongdoing and thereby breaks through the expectations of loyalty and cultures of silence that are typical in organizations (Zedner, 2006; Starystach & Holy, 2021; Pope, 2019; Alpert et al., 2021). Nevertheless, in many social discourses, it is not only associated with positive consequences (clarification, prosecution, and prevention of abuses), but sometimes also with betrayal and denunciation (see Brown et al., 2014; Berndtsson et al., 2018; Oleson, 2021; Wahl-Jorgensen & Hunt, 2012; Di Salvo, 2015; on intercultural differences, see Bussmann et al., 2021).

Such ambivalent assessments contributed to the fact that, when Directive (EU) 2019/1937 was enacted, there was still no comprehensive regulation of whistleblowing in Germany, as in many other EU member states (for an overview of the previous European legal situation see Vandekerckhove, 2010, 19–31; Thüsing & Forst, 2016; Loyens & Vandekerckhove, 2018, 5–12). External whistleblowing in particular had only been recognized as legal by the courts under special conditions (ineffectiveness or dysfunctionality or undue hardship of internal reports; see Federal Labor Court decision (BAG), 2 AZR 235/02, July 3, 2001). Key political players were generally skeptical about whistleblowing. They not only saw the organizational advantages and regulatory functionalities but also feared denunciation and corporate damages (for more on this, see the discourse analyses in Balbierz, 2022; Kölbel & Wienhausen-Knezevic, 2024). Consequently, no general whistleblowing law was enacted, but rather a few special regulations limited to certain industries. And even after the Whistleblowing Directive was enacted, its transposition into German law required an unusually lengthy process (see Fest, 2024). It was not until mid-2023, and thus only after the deadline had been reached,<sup>3</sup> that a new government passed the Hinweisgeberschutzgesetz (hereinafter “HinSchG” or “Whistleblower Protection Act”),<sup>4</sup> which, however, extends the above-mentioned requirements of the directive to include insider reports of violations of national law (on the transposition in other EU states see Gerdemann, 2023).<sup>5</sup>

After a long political debate and basically solely due to its mandatory integration into the European multi-level political system, Germany now possesses a legal framework that is aimed at establishing whistleblowing as an effective means of corporate control. While the early authoritative case law was primarily concerned with striking a balance between the interests of disclosure and confidentiality of insiders and companies, the Whistleblower Protection Act now intends to establish a functional coexistence of private and public law

<sup>3</sup> However, transposition was delayed in almost the entire European Union (see, for example, Transparency International, 2021a), with the result that the deadline was missed in 24 of the 27 EU member states (Gerdemann, 2025, p. 2).

<sup>4</sup> English-language version at [https://www.gesetze-im-internet.de/englisch\\_hinschg/index.html](https://www.gesetze-im-internet.de/englisch_hinschg/index.html) (retrieved May 26, 2025).

<sup>5</sup> Due to the EU’s limited competence to set standards, the directive relates solely to whistleblowing in the event of a breach of European law. Some members of the German parliament did not want a more extensive regulation, but a so-called 1:1 transposition. This would have made the law much less relevant in practice.

enforcement: “By setting up internal reporting systems in companies and public authorities, whistleblowers should be given the opportunity to report violations where they can usually be investigated and remedied most quickly. The aim is to make it easier for the companies and authorities concerned to become aware of such irregularities, follow them up and take any necessary measures. The establishment of external reporting offices also serves to uncover and pursue violations, albeit from outside the company or authority concerned. Both reporting systems complement each other in this respect.” (Bundesregierung, 2022).

Against the background of these developments at European and member state level, the present study examines the extent to which the (new) political expectations are being met. The text focuses on external whistleblowing and asks whether the establishment of external reporting channels has led to a relevant frequency of reports and whether these contribute to the detection and sanctioning of corporate crimes.

## Contextualization of the Study

### a) The German External Reporting Body

Whistleblowing research to date encompasses a large number of surveys and factorial studies that examine the broad spectrum of conditions that influence decision-making. More precisely, the existing body of research mainly focuses on factors that promote or – such as the fear of negative personal consequences (among many others, see Transparency International, 2021b, 33–34) – inhibit whistleblowing (see reviews e.g. in Mesmer-Magnus & Viswesvaran, 2005; Gao & Brink, 2017; Nicholls et al., 2021). In these studies, however, only the intention to report questioned in the survey situation (instead of real reporting behavior) acts as the relevant dependent variable (see Bjørkelo & Bye, 2014; Oelrich, 2021). Research with field data takes place mainly in small studies in which the personal and conflict-related developments that lead to reporting are reconstructed using qualitative social research methods (Hedin & Månsson, 2012; Kenny, 2018; Kölbel & Herold, 2019; Carollo et al., 2020; Greenwood, 2020; van Eijbergen & Siebers, 2025).

However, the prevalence of whistleblowing and its processing by addressees has been researched less frequently. Corresponding data is mainly available from publications by commercial providers of internal whistleblowing systems (see, for example, Stubben & Welch, 2020; NAVEX, 2025).<sup>6</sup> There are also broad surveys on reporting experiences – whereas these are often conducted by stakeholders with own interests such as companies, civil society organizations, and associations (see e.g. Ethics & Compliance Initiative, 2023; differently: Skivenes & Trygstad, 2017; De Graaf, 2019; Park & Lewis, 2019).<sup>7</sup> The evaluation of officially registered material, as otherwise common in criminology, is extremely rare. Hence, it is noteworthy in this respect that the present study analyzes precisely such data in relation to external whistleblowing.

<sup>6</sup> Reference should also be made here to the data provided by the Association of Certified Fraud Examiners (2024, 23–24), as well as to numerous surveys conducted by consulting firms that ask their client companies about their experiences with whistleblowing.

<sup>7</sup> As with the data from commercial providers, the methodological quality is often difficult to assess. This also applies to surveys of companies (e.g. Hauser et al., 2021), as the selection of the actual respondents is usually completely unclear.

In transposition of Directive (EU) 2019/1937 and the HinSchG, the “external reporting body at the Federal Office of Justice” (hereinafter “reporting office”) was established in Germany as a nationwide, largely autonomous institution that must provide various reporting channels (for institutional solutions for external whistleblowing in other EU member states, see Skupień, 2025). Company insiders can decide whether they want to submit their information to the internal contact points of their companies<sup>8</sup> or to the reporting office. The reporting office (as well as the internal contact points) must treat the information it receives confidentially. If it considers the report to be valid after a cursory examination, it passes the case on to the responsible public prosecutor’s office or to the supervisory authority where the internal breach of the law will then be dealt with in detail. However, the reporting office will only exercise its clearing function if the Whistleblower Protection Act is applicable. To this end, the subject matter of the report must be related to the professional activity of the reporting person (i.e. generally based on the special knowledge of organizational insiders<sup>9</sup>) and to a legal violation that can in principle be sanctioned with a penalty or fine, or can be assigned to one of the areas of law specified in Sect. 2 of the Whistleblower Protection Act.

External whistleblowing in the form of reports directly to the police, the public prosecutor’s office or the respective supervisory institutions has always been possible. The reporting office, however, now lifts the burden on the persons willing to report in that they no longer need to identify nor contact the institutions responsible for the specific case themselves. In addition, the Whistleblower Protection Act provides confidentiality and protection against sanctions under labor law only for external information provided to the reporting office. Despite the existing traditional whistleblowing infrastructure, the reporting office is aimed at making a significant difference and boosting external whistleblowing because it is an additional and “central” institution for receiving information from whistleblowers,<sup>10</sup> that also offers more “careful” treatment than other authorities to these individuals. Therefore, the reporting office represents an institution whose practice can be used to examine the reality of external whistleblowing.

## **b) Overview of the Body of Research on External Whistleblowing**

In general, the frequency of external reports is rather low according to the available findings. If organizational members do not keep their whistleblowing knowledge to themselves or only discuss it in their personal environment (“silent observer”), they usually turn to organizational units or whistleblowing offices within the company. If this is unsuccessful (possibly even after several attempts), the effort is often abandoned (Vandekerckhove & West, 2011; Vandekerckhove & Phillips, 2019). Only a low double-digit percentage of the people in question apparently disclose their knowledge to the outside world (see Donkin et al., 2008;

<sup>8</sup> The law obliges all private and public organizations with at least 50 employees to set up an internal whistleblowing system.

<sup>9</sup> However, this also includes people who are referred to as “bellringers” in empirical research (e.g. van Erp & Loyens, 2018: suppliers, consultants, etc.).

<sup>10</sup> The Whistleblower Protection Act also allows for the creation of external reporting offices in the German federal states. However, this option has not yet been used, which is why the federal government’s external reporting office is the central external whistleblowing institution in Germany.

Skiveness & Trygstad 2017; Vandekerckhove & Phillips, 2019 and the review in Kölbel & Herold, 2022). This is most likely in the case of serious grievances (meta-analytical Festa et al., 2024).

For the de facto priority of internal whistleblowing (Donkin et al., 2008; Skivenes & Trygstad, 2010; Bjørkelo et al., 2011; Greenwood, 2015; Taylor, 2018; De Graaf, 2019; Vandekerckhove & Phillips, 2019), not only do practicability considerations and feelings of fairness or loyalty appear to be significant, but so do feared or real threats of internal and/or formal sanctions (cf. for example Dhamija & Rai, 2018; Park et al., 2020). These aspects are also decisive where state reporting offices offer anonymity, protection and even financial incentives (Kesselheim et al., 2010; see also Iwasaki, 2018). Whistleblowers particularly prefer those internal reporting channels through which they are well-informed and which react fairly to reports (Jeon, 2017). According to most studies, external whistleblowing often only occurs where no internal reporting option is available, or a conflict has either arisen or is expected following an internal report (for extensive evidence see the review by Kölbel & Herold, 2022).

As a result, state reporting offices have only received a limited number of reports by whistleblowers (see the overview of available international data in Kölbel & Herold, 2022, 191–194). In Germany, the reporting options that previously existed by a number of supervisory authorities were de facto not used at all (Bundesregierung, 2019). For some institutions, however, the situation is different (see also Savage and Hyde (2015) on the widely differing figures received by UK supervisory authorities). For example, the reporting facility at the German Federal Cartel Office registers several hundred reports per year (2021 and 2022: 913 in total; see Bundeskartellamt, 2023) and the German Federal Financial Supervisory Authority even more than 1,000 cases per year (Bundesanstalt für Finanzdienstleistungsaufsicht, 2025).<sup>11</sup>

A particularly well-known international example of a frequently used option for external whistleblowing is the whistleblower program run by the US Securities and Exchange Commission (SEC). The number of hints received there rose from around 3,000 to 12,322 in the fiscal years 2012 to 2022 and again in the two subsequent years (but solely due to reports from two individuals) to 18,354 and 24,980 respectively (Office of the Whistleblower, 2022; 2024).<sup>12</sup> On this basis, the SEC also generates very substantial fines – whereby whistleblowing leads to cases becoming “stronger” than comparable other proceedings (Call et al., 2018: higher fines and prison sentences). However, this is apparently limited to a relatively small number of reports, whereas a very large proportion of reports remains without any consequences (cf. the calculations in Call et al., 2014, p. 28, 33: 80–85%). It is unclear on which reporting characteristics this depends (but see Kaplan et al., 2020 for experimental data).

Comparable data on the processing of external reports from other countries and other institutions are not published or do not exist (for internal whistleblowing, however, see, for example, Vandekerckhove & Phillips, 2019, p. 213; De Graaf, 2019, 218–221; Skiveness & Trygstad, 2017, 120–122, 131–134). Strictly speaking, systematic research on this subject

<sup>11</sup> The two institutions are responsible - instead of the external reporting office - for receiving reports in narrowly defined areas (competition and financial offenses). For the numbers see BT-Drs. 19/14,980, 17, 30; BT-Drs. 19/29,193, 2; BT-Drs. 20/7300, 36 as well as the annual reports published at [www.bafin.de](http://www.bafin.de).

<sup>12</sup> The volume of reports on tax matters is also significant (see Internal Revenue Service Whistleblower Office, 2025).

is not yet available (see the literature review in Kölbel & Herold, 2022). This is one of the reasons why empirical evidence that external whistleblowing increases compliance among the companies involved<sup>13</sup> and also provides a deterrent effect across the market (indications in Cordisi & Lambert, 2017; Johannesen & Stolper, 2021; Berger & Lee, 2022; Wiedman & Zhu, 2023; Raleigh, 2024) has so far remained rather preliminary and singular (for the current state of research see also Gotelaere & Paoli, 2025).

## Research Question and Methods

The lengthy political process that ultimately led to the institutionalization of external whistleblowing in Germany was accompanied by shifting assumptions. Fears that it could have harmful consequences for companies were (slowly) replaced by the idea that the newly established reporting office could make a relevant contribution to public law enforcement in the economic system. However, previous research only partly supports this expectation. Findings on the frequency of external whistleblowing (as well as on the institutional processing of reports and their effects) are very preliminary and divergent. In this respect, there is a need for further research, to which the present study aims to contribute. The establishment of the external reporting office in Germany is not only an occasion for this, but also an opportunity which allows the evaluation of the reports received there as well as their processing. Specifically, the study examines how many and which hints are forwarded to the reporting body and to what extent the processing of these reports by the office leads to reactive or preventive measures in cases of corporate crime (regarding further and additional findings from the study see Kölbel, 2025). Such findings make it possible to assess the importance of external whistleblowing for corporate control and the high expectations that EU legal policy has in this regard.

The study therefore uses two sets of data that have not been used in this form in Germany so far and that have rarely been used internationally:

- **Case documentation by the reporting office:** The reporting office is subject to reporting obligations to the EU and the German Parliament, which is why it records the incoming reports statistically. This includes basic characteristics of the reports and their processing. The present study analyses data for the period from July 2023 (start of the reporting office's activities) to the end of December 2024. It had to be considered that the case documentation changes during the processing of the cases. Sometimes new entries of case characteristics (e.g. after further measures requiring documentation have been taken) but also changes are made (e.g. if an initial classification is assessed differently). Depending on the current workload, such corrections are made at short notice or with a slight delay. For this reason, February 28, 2025, was set as the cut-off date. The information from the recording of all cases received by December 31, 2024, therefore relates to the status of processing and documentation on this date.

<sup>13</sup> According to the study conducted by Wilde (2017), companies that had experienced external whistleblowing were more likely to refrain from irregular accounting and aggressive tax models for at least two years from the year of the allegations than a control group. In Duong et al. (2025), they increased investment in internal operational structures and processes, and Smaili and Arroyo (2022) show increased compliance measures in some case studies.

- **Sample of reports:** For some of the reports, an extended evaluation was carried out. To achieve a sample size of between 250 and 300, every seventh case received (in chronological order) was identified from all reports submitted by November 15, 2024. Further information was collected for these 272 reports. This was done using an evaluation form by the employees of the reporting office, as outsiders were not allowed to view the cases due to the confidentiality required by law. This data collection was based on the processing and documentation status at the time of the survey (end of February/beginning of March 2025).

In addition, semi-structured interviews were conducted with almost all employees of the reporting office who process the reports ( $n=7$ ).<sup>14</sup> Without exception, these people were lawyers with extensive professional experience. On request, they agreed to be interviewed, but without consenting to the publication of excerpts from the interviews. Due to this limitation, the interview material is not used here as an independent data source, but only occasionally to aid understanding of the case documentation.

## Results

### a) Input and output

In the first 18 months of its existence, the reporting office registered a total of 2,212 reports (with an irregular upward trend).<sup>15</sup> The majority of reports (88.4%) were received via the online portal. A significant proportion of these reports (58.5%) were anonymous.<sup>16</sup> Insofar as an initial assessment was possible and had been carried out by the cut-off date, roughly equal proportions of the reports related to breaches of German or EU law in one of the areas of law listed in Art. 2 para. 1 of the Directive (29.8%) and to offenses against German legal norms in another area (35.4%). Violations of working time or occupational health and safety regulations were reported particularly frequently (18.9%).

For 316 of the 2,212 reports, no initial assessment had been made by the cut-off date (Table 1). In 1,188 cases (=62.7%) of the 1,896 reports that had undergone a preliminary valuation, reactions in the form of administrative measures (618) or penalties (570) were initially considered possible. However, after a cursory examination, the reporting agency had forwarded only 298 cases to a public prosecutor's office (108) or a supervisory authority (190). This amounts 24.5% of the 1,216 cases completed by then. Following this, the authority then only received sporadic information about further processing by these institutions. To the knowledge of the reporting office, 115 cases had been investigated (48 by a

<sup>14</sup> The interviews were conducted online, lasted between 60 and 90 min, and were recorded. After transcription, they were coded by the author using MaxQDA and subjected to content analysis.

<sup>15</sup> Since October 2024, reports that are not made by members of an organization and to which the HinSchG is clearly not applicable (i.e., reports which cannot be processed) are no longer interpreted and recorded by the reporting office as reports, but as requests for advice. Without this new practice, the total number of reports received would be slightly higher.

<sup>16</sup> The online portal received both open and anonymous reports. The reports submitted by mail (106), email (133), or telephone (19) also included both types.

**Table 1** Sanctioning relevance and processing results of the reports

	Cases registered		Sample			
	N	%	Total		Only reports from within companies	
	N	%	N	%	N	%
Initial valuation by the reporting office						
Criminal offense	570	25.8	76	27.9	41	25.3
Administrative offense	618	27.9	83	30.5	60	37.0
Without sanctioning relevance	708	32.0	106	39.0	58	35.8
Unknown/not yet recorded	316	14.3	7	2.6	3	1.9
Total	2,212	100.0	272	100.0	162	100.0
Processing by the reporting office						
Total	2,212	110.0	272	100.0	162	100.0
ongoing	996	45.0	83	30.5	61	37.7
concluded	1,216	55.0	189	69.5	101	52.3
of which:						
Handover to the public prosecutor's office	108	4.9	21	7.7	8	4.9
Transfer to another authority	190	8.6	25	9.2	18	11.1
Other termination	918	41.5	143	52.6	75	46.3
Further processing by the public prosecutor's office	108	100.0	21	100.0	8	100.0
of which:						
Known investigation proceedings	48	44.4	9	42.9	5	62.5
Closing known	25	23.1	0	0.0	0	0.0
Prosecution or sanction	0	0.0	0	0.0	0	0.0
Further processing by the supervisory authority	190	100.0	25	100.0	18	100.0
of which:						
Known procedures	67	35.3	13	52.0	9	50.0
Closing known	25	13.2	2	8.0	2	11.1
Supervisory measure or sanction	7	3.7	2	8.0	2	11.1

Individual (but very few) reports relate to several facts, some of which are to be classified differently (e.g. once as a criminal offense and once as an administrative offense). In this case, only one fact – and the more serious one – is taken into account.

public prosecutor's office and 67 by a supervisory authority). Of these, 50 had been completed (25 each). These were almost always closures of the investigations, while administrative measures and sanctions were rare (only 7 cases).

The situation is quite similar in the reporting sample. Of the 272 reports, 86 came from the public sector, 24 from other or unknown contexts (sports, churches, NGOs, etc.) and 162 from companies. The cases in the third subgroup are most likely to be corporate crimes. However, they show hardly any variation from other reports. There are no anomalies in internal clarification and conflict processes that occurred before the external report (Table 2). None of the other differences are striking either.<sup>17</sup>

<sup>17</sup> This can also be seen in comparison with reports from the public sector (administration, police, education, science, health, justice, etc.). An examination of numerous correlations revealed only a single (weak to moderate) significant correlation: reports from companies are more likely to reach the external reporting office anonymously ( $\chi^2(1)=10.288, p=.001, \phi = -0.206$ ). It is possible that the need to protect their own identity is greater in private organizations.

**Table 2** Internal activities prior to reporting

	Total sample (272)			Reports from within company (162)		
	<i>N</i>	%	% to cases	<i>N</i>	%	% of cases
Report to superiors	41	12.6	15.1	23	12.3	14.2
Report to internal reporting body	6	1.8	2.2	3	1.6	1.9
Discussion among colleagues	34	10.4	12.5	19	10.2	11.7
Internal disputes	28	8.6	10.3	15	8.0	9.3
Internal sanctioning	13	4.0	4.8	6	3.2	3.7
Inadequate internal processing despite reporting	23	7.1	8.5	11	5.9	6.8
Unknown/not specified	181	55.5	66.5	110	58.8	67.9
Total	326	100.0	119.9	187	100.0	115.5

Multiple answers possible

However, reports from companies contain a relatively large number of facts that are relevant to regulatory law (see the right-hand columns in Table 1).<sup>18</sup> Nevertheless, neither they nor the total sample show any clear particularities in case selection: The reporting office in fact closes the company-related procedures with a slightly below-average frequency. Although at the beginning of the process, 58.4% of the cases in the sample and 62.3% in the corporate sub-sample were considered potential criminal or administrative offenses, only 24.3% (46 out of 189) and 25.7% (26 out of 101) of the completed cases were forwarded to an institution with sanctioning capacity. This led to official measures being taken in only two cases.

## b) Reasons for the Selection of Notifications

The reporting office can only hand over a case to the public prosecutor's office or another authority for further processing if it considers the report to be "valid". But it assumes "validity" if there are sufficient indications and possibilities for further investigations. In order to carry out this preliminary examination, it can request information from other authorities and the companies named in the report as well as carry out its own general research on the Internet (which was done for 10% of the reports in the sample). However, most cases were investigated by the reporting office solely on the basis of the content of the report and the information provided by the whistleblower. The reporting office often contacts these persons again. In the sample, this was done in 193 cases (126 of them more than once). Here, additional information or evidence was almost always requested.

Nevertheless, validity is a low-threshold verification criterion. This is probably one of the main reasons why the reporting office rejected the validity of a limited number of reports. Overall, this only applied to 13.3% of the procedures that were closed without result. In contrast, most unsuccessful terminations were based on the fact that the reporting office already denied the applicability of the Whistleblower Protection Act and thus also its competence to handle the case (which is why it does not check the validity of the case). Typically, this concerned reports that could not be assigned to any of the

<sup>18</sup> At the same time, a tax, insolvency or other economic offense was assumed in 20 cases of the initial assessment.

**Table 3** Variants of completion without delivery

	Cases registered		Sample			
			Total		Only reports from within companies	
	N	%	N	%	N	%
Discontinuation due to lack of validity or lack of evidence	122	13.3	17	11.9	10	13.3
Discontinuation as personal/subjective scope of application of the Whistleblower Protection Act not opened	543	59.2	93	65.0	44	58.7
Other completion/unknown	253	27.6	33	23.1	21	28.0
Total	918	100.0	143	100.0	75	100.0

legal areas listed in Sect. 2 of the Whistleblower Protection Act or were not related to the reporting person's professional organizational affiliation (e.g. because they dealt with neighborly, internet or other everyday matters). This was true for more than half of all completions (Table 3).<sup>19</sup>

Some cases in which the reporting office is competent and confirms the validity of reports are also closed for reasons of confidentiality. Many whistleblowers want to avoid becoming known in their company as the originator of the report. However, as soon as a report is submitted to the public prosecutor's office or another authority, this institution can request that the whistleblowing office disclose their identity. If the company then receives access to the case files, it will also be informed of the name of the person who made the report. Some reports also concern very specific facts from which the whistleblower could be identified anyway. For this reason, the reporting office asks whistleblowers before each submission whether they wish to bear the risk of being identified. This is often refused. Sometimes, the reporting office also receives no response at all because the whistleblower does not wish to have any further contact after making a report. In both constellations, the reporting office only passes very important cases to the public prosecutor's office. As a rule, however, it discontinues the proceedings. These cases form a significant (but not specifically quantifiable) part of the category "Other completion" in Table 3.

## Discussion

### a) Unfulfilled Regulatory Expectation

For whistleblowers, their report often has a high subjective significance if and insofar as they are personally affected by the facts of the case.<sup>20</sup> In this regard the reporting office has a highly relevant service function because it receives the reports and handles them confidentially. It also provides information on how to proceed and relieves whistleblowers of the burden of finding the institution responsible for the final processing of the report. However, the establishment of the reporting body was primarily linked to the expectation that it would stimulate external whistleblowing and – particularly in view of corporate crimes – signifi-

<sup>19</sup> Without the change in registration practice mentioned in fn. 15, the proportion would be even higher.

<sup>20</sup> In the sample, it was assumed by the reporting office that 63 reports were of high and 99 of medium individual significance for the whistleblowers.

cantly strengthen public enforcement of corporate law. Based on the material presented here, which is rarely available in a comparable form (even internationally), this regulatory function has so far hardly been fulfilled by the reporting office:

Firstly, the number of reports received by the reporting office already seems rather low, at least if one considers the whole number of companies in Germany (currently around 92,500 with at least 50 employees<sup>21</sup>). A comparison with the considerable volume of reports received by the reporting offices of the German Federal Cartel Office and the German Federal Financial Supervisory Authority, both of which focus on very specific forms of corporate crime (see above), confirms this impression. Secondly, three out of four proceedings end in discontinuation and without further consequences. The reporting office only forwards one in four reports to an institution that can order a sanction or corrective intervention. However, such measures have only been taken in very few cases to date.

## b) Institutional Dimensions and Policy Implications

Reasons for the non-fulfillment of the regulatory expectation can be sought in the institutional design and in the processing of reporting. From this perspective, the considerable case selection by the reporting office is not a specific feature. Rather, the practice of many institutions involved in social control and prosecution is characterized by a significant attrition rate. Typically, numerous incoming cases are closed without result, i.e. are only processed further and ultimately sanctioned with limited frequency (cf. e.g. Jehle et al., 2008; Choe, 2014; Harrendorf, 2018). In 2024, for example, the public prosecutors in Germany completed no more than 15.8% of proceedings with a criminal charge or equivalent decision (Federal Office of Statistics, 2025). Most cases were concluded because the allegation could not be confirmed (31.5%) or was related to a minor matter (32.7%).

The reporting office has something in common with the public prosecutor's office in that it also assesses its cases from a decidedly legal perspective (i.e. unlike the police, it is not primarily fact-oriented<sup>22</sup>). For this reason, the dismissal of a case, because the suspicion was not confirmed, has a certain relevance for them as well.<sup>23</sup> However, the fact that the significance is considerably lower than in the practice of the public prosecutor's office is due to the clearing function of the reporting office, which means that its examination standard is very low and only allows implausible ("unsubstantiated") reports to be excluded. The fact that the reporting office nevertheless generates a considerable degree of selection must therefore be explained by special reasons for termination (namely lack of competence and confidentiality protection). This results from the unique position of the reporting office, which only takes action when reports are made out of organizations, and which must protect whistleblowers. Such restrictions do not occur at all or only to a lesser extent with many other control institutions.

It is therefore plausible that there is a strong selection of reports in the reporting office's practice. It is based on the institutional design under which the reporting office only has

<sup>21</sup> <https://www.destatis.de/DE/Themen/Branchen-Unternehmen/Unternehmen/Unternehmensregister/Tabelle/unternehmen-beschaeftigtengroessenklassen-wz08.html> (retrieved May 23, 2025).

<sup>22</sup> For this reason, the police sometimes tend to "upgrade" the facts and to classify the case as a more serious offense compared to the classification by the public prosecutor's office.

<sup>23</sup> In contrast, the reporting office has only used the option of termination on the grounds of insignificance in one case.

limited authority and must also balance its somewhat contradictory tasks: namely to identify potentially informative reports, but also to ensure extensive protection for whistleblowers. As it does not appear to make sense to remove the limits of the reporting office's responsibility and/or to reduce the level of protection of confidentiality, the high level of selection can hardly be changed. The best way to achieve a lower attrition rate would be to give whistleblowers fewer reasons to prioritize their identity protection. Although the HinSchG already provides strong defensive measures against labor sanctions and disadvantages, this protection is evidently perceived as inadequate by numerous whistleblowers, so that their need for secrecy remains unchanged.

### c) Input-Related Dimensions and Policy Implications

The above considerations on institutional design do not explain why the number of reports remains limited. More importantly, it remains unclear why the reports that have been forwarded to the public prosecutor's office or supervisory authorities have so far led to very few measures (and no sanctions at all). The available data only allows for speculation: the fact that the reports are only checked for validity before they are submitted increases the likelihood that the allegation will not be confirmed during further processing. However, this could also be due to the quality of the information passed on. In interviews, employees of the reporting office reported that the legal violations processed were all of low to medium severity. Highly dangerous or harmful offences are very rare in the reported cases. This may be reflected in a reduced enforcement rate on the part of the public prosecutor's office and supervisory authorities.

This approach therefore refers to the input: the reporting office receives relatively few reports, which rarely give rise to further processing and hardly ever concern a serious corporate or organizational crime. These characteristics of the volume of reports can in turn be based on various reasons. Since it cannot be assumed that the corporate offenses in question occur very rarely (see above), there are likely to be numerous occasions for reporting. However, the existence of the reporting office could then be irrelevant to the decisions of potential whistleblowers, because they may prefer to either withhold their knowledge or pass it directly on to the responsible authorities. Further, the quantitative and qualitative limitations of the number of reports could also be based on the mandatory establishment of internal reporting offices. This could, as it were, deprive the external reporting office by addressing many (and above all many informative) reports to the company's own offices. And indeed, the reporting body receives numerous reports that were preceded by an internal attempt at clarification (but less so by internal whistleblowing) (Table 2 above). Consequently, as far as can be vaguely estimated for Germany based on company and employee surveys (Hauser et al., 2021; Ethics & Compliance Initiative, 2023), the number of internal reports is significantly higher than the reporting volume to the reporting office. These observations point to a relevant competition between the reporting systems, as a result of which the external reporting office misses out on numerous reports.

This can give rise to a regulatory problem (Kölbel, 2015): In the case of internal whistleblowing, it is not guaranteed that companies will pursue the same interests when processing the whistleblower's information as the official treatment of an external report does, at least *de jure* (remediation of wrongdoing; reactions to organizational members responsible for wrongdoing; future interventions to ensure compliance). The company's own internal inves-

tigations typically focus the handling of internally disclosed grievances more on corporate interests (especially avoiding liability and reducing other event-related complications) (for research on this, see Meerts & Dorn, 2009; Ziegler, 2010; Gottschalk & Tcherni-Buzzeo, 2017). In the (small) sample of Dworkin and Baucus (1998), external reports were therefore much more likely to lead to organizational corrections than internal ones (cf. also the experimental findings by Stein, 2023). Accordingly, only a limited proportion of internal whistleblowers are satisfied with internal reactions (cf. for example Vandekerckhove & Phillips, 2019: approx. 1/3; for a review, see also Herold, 2022). Ultimately, however, not enough is known about the processing of internal reports by companies to be able to assess the consequences of competition between internal and external reporting channels. In any case, it would hardly be possible to counteract this from a regulatory perspective (at best by the reporting office advertising the use of its services more strongly).

## Summary

After a long debate, the influence of EU legislation has led to the adoption of an approach in German law that is widely used internationally and that considers external whistleblowing as an important element in limiting corporate crime. However, the central authority created for this purpose, the reporting office, has so far only achieved limited significance. The examination of specific sets of reports shows that the reporting office only forwards around a quarter of the cases received to the public prosecutor's office or supervisory authorities for further processing. So far, this has only led to reactive or corrective measures in very few cases. The expectations regarding the relevance and effectiveness associated with the institutionalization of external whistleblowing have therefore not yet been fulfilled.

At the same time, however, it is also important to mention the limitations of the present study. The data was predominantly generated in institutional processes and is therefore influenced by them. Furthermore, the study solely deals with the conditions in Germany, so that no comparison and therefore no generalization is possible. In addition, the study assesses a relatively short period of time (the first 18 months after the establishment of the external reporting office). It is therefore necessary to repeat the study later. This future research should be internationally in its layout to enable a comparison with the situation in those EU countries in which external whistleblowing is promoted with other regulatory designs (decentralized organization, narrower or broader responsibilities, extended powers, etc.). Until then, the present findings give rise to one particular consequence for legal policy: a significant reduction of expectations towards the performance of external whistleblowing structures.

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## Declarations

**Ethics Approval and Consent to Participate** Available.

**Consent for Publication** Available.

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