

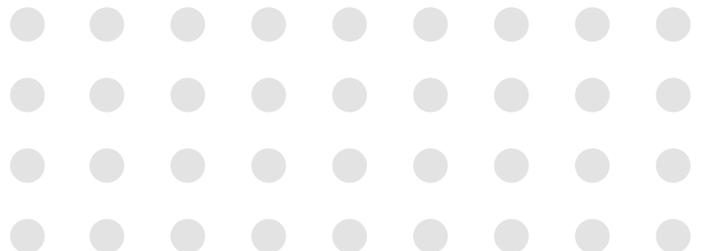
European Whistleblower Report



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Introduction

On 16 December 2019, the Directive (EU) 2019/1937 of the European Parliament and of the Council on the Protection of Persons Who Report Breaches of Union Law (also referred to as the „Whistleblowing Directive“) (the „Directive“) entered into force. The aim of the Directive is to ensure minimum standards of protection for whistleblowers across the European Union. EU Member States were required to transpose the Directive into national law until 17 December 2021. National laws must meet the minimum requirements of the Directive, but it is up to the national legislator to create more stringent regulations at national level and to extend the scope of application.

More than one year after this deadline, some Member States were still late to implement the Directive, causing the EU Commission to launch several infringement proceedings against Member States.

The scope of the Directive includes public procurement, product safety and compliance, transport safety, environmental, radiation, food, animal, consumer and data protection, network and information system security and public health. Member States can also include protection for interpersonal grievances between the reporting person and co-workers in their national legislation.

The primary means of protection is the mandatory establishment of internal reporting systems. The obligation to set up internal whistleblowing channels applies to legal entities in the private sector with 50 or more employees. Irrespective of the headcount, regulated entities in the financial sector and companies active in the prevention of money laundering, terrorist financing, road safety and environmental protection must also establish reporting systems. This further applies to legal entities in the public sector and entities owned or controlled by them (e.g., municipalities, provinces, public authorities).

The technology and means of communication of internal reporting channels are not specified in the Directive. However, the channels must be designed and operated in such a manner as to ensure anonymous reporting, protect the whistleblower’s identity and provide for diligent follow-up on the report by a designated person or department.

Third parties can also be authorised to receive reports of breaches on behalf of legal entities in the private and public sector, provided they offer appropriate guarantees of independence, confidentiality, data protection and secrecy. This includes external reporting platform providers, external counsel, auditors, trade union representatives or employees’ representatives. Legal entities must provide clear and easily accessible information on their internal reporting procedures and on external reporting procedures to relevant authorities. This information can be posted on the website of the entity or included in courses and training seminars on ethics and integrity.

The designated body for internal reporting must confirm receipt of the report to the whistleblower within seven days. National legislation must specify a reasonable timeframe to provide feedback, not exceeding three months from the acknowledgment of receipt. An appropriate follow-up measure could include a referral to other channels, closure of the investigation (e.g., due to a lack of sufficient evidence) or internal enquiries.

The Directive does not affect co-determination rights of employee representatives and participation in collective bargaining.

The Directive affords protection to reporting persons who acquired information on breaches in a work-related context. This includes employees, candidates, former employees, self-employed persons, suppliers, subcontractors, volunteers, shareholders as well as facilitators and third persons connected with the reporting person and who could suffer retaliation in a work-related context. Reports of anonymous whistleblowers are not per se protected by the Directive. However, Member States are free to extend the personal scope to anonymous informants. Whistleblowers enjoy protection against retaliation (including threats and attempts thereof), unless the report was made maliciously. Member States must also ensure that the whistleblower’s identity is protected at all times. Third persons referred to in the report (e.g., witnesses or colleagues) are also protected at all stages of the procedure.

In the event of a breach, whistleblowers must have access to legal remedies and compensation, as appropriate, including interim relief pending the resolution of legal proceedings in accordance with national law. While the types of legal action may vary between Member States, each country must ensure that the appropriate remedy in each case is determined by the kind of retaliation suffered, and the damage caused in such cases should be compensated in full in accordance with national law.

Member States must regulate penalties against persons or entities that hinder or attempt to hinder reporting, retaliate or bring vexatious proceedings against whistleblowers or breach the duty of confidentiality of the whistleblower’s identity. Also, Member States must ensure effective, proportionate and dissuasive penalties applicable in respect of reporting persons where it is established that they knowingly reported or publicly disclosed false information. While the Directive provides vital minimum protections for whistleblowers for maintaining an open and transparent society, as they expose misconduct or hidden threats, there is still some ambiguity in the transposition requirements that could leave potential whistleblowers unprotected. Although eight Member States have not yet transposed the Directive into national law at the time of writing, companies in the European Union are well advised to familiarise themselves with the new obligations and to take initial preparatory steps.



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1. Has the EU Whistleblowing Directive been implemented in your country? If not: At what stage is the legislative process and when do you expect the national legislation to enter into force?

Italy is expected to implement the EU Whistleblowing Directive by 10 March 2023, once the existing scheme of the legislative decree – already approved by the Privacy Authority – will be published (the “Decree”).

2. Will your national legislation apply to businesses with fewer than 50 employees?

Yes, but limited to: (a) all legal entities in the public sector and (b) private entities that: (i) voluntarily adopt the Organisation Model within the meaning of D. Lgs. No. 231/01 (i.e. the law on administrative liabilities of legal entities), or (ii) operate in EU-regulated sectors (e.g., financial markets, credit).

3. Are there any additional reporting matters (other than the ones included in the EU Whistleblowing Directive)?

Yes, but limited to companies of the public sector and companies referred to in letter (b)(i) above: additional reporting matters refer to certain breaches of national laws and/or regulations.

4. Can a grievance/an interpersonal grievance constitute a reporting matter?

No.

5. What internal whistleblowing channels will companies need to put in place in your country?

Companies must put in place one internal channel, which shall grant confidentiality.

6. Must the internal reporting channel permit oral reporting?

Yes.

7. Can the internal reporting channel be outsourced?

Yes.

8. Is there any statutory obligation to provide whistleblowers with any information about the internal and/or external reporting channels?

Yes.

If so, must this information be given in local language?

Not legally imposed, but strongly advisable and implied in the provisions of the Directive (what if the whistleblower does not speak different languages than the local one?). Private entities must provide whistleblowers with clear information on the channels, the procedure and the conditions on reporting, also by creating a dedicated section on their website.

9. Is there a mandatory procedure that companies will need to follow once a report is filed?

Yes, companies need to (a) send to the reporting person a notice of receipt of the report within seven days, and (b) give feedback to the reporting person within three months.

10. What are the works council’s or other representative bodies’ participation rights in respect of whistleblowing systems?

Before establishing the internal channel, companies need to inform unions thereof.

11. Which categories of persons can be whistleblowers in your country?

Under the Decree, employees, self-employed individuals, volunteers and interns, stakeholders and persons with administrative, managerial, controlling or supervisory functions.

12. Can reports be anonymous?

Yes.

13. What protection will be afforded to whistleblowers under your national legislation?

Any form of retaliation against the reporting persons is prohibited (such as, retaliatory, or discriminatory dismissal, or demotion); in such a case, the burden of proof is shifted from the whistleblower to the public/ private entity.

Does that protection still exist if the disclosure is determined to be without merit or if the report was maliciously made?

In case of criminal or civil liability for defamation and slander, the protection is not granted, and a disciplinary sanction will apply to the reporting person if the reporting person is an employee.

14. How much compensation can be awarded to a whistleblower if they are penalised for having made a report?

Any retaliatory or discriminatory act against the reporting person is null and void. Therefore, depending on the whistleblower’s position, judicial remedies may be applicable (e.g., reinstatement in the workplace, damages, etc.)

15. How should the employer deal with persons named in the report?

After an in-depth investigation, to be carried out based on procedures established at entity/ company/ group level, the employer can decide to start a disciplinary proceeding according to the rules provided by the law and by the applicable national collective bargaining agreement, if the report turns out to be true.

16. Does your national whistleblowing legislation create offences for non-compliance and what penalties do such offences attract?

Administrative sanctions will apply if (i) retaliatory acts are committed against the reporting persons (ranging from EUR 5,000 to EUR 30,000), and/ or (ii) whistleblowing channels and procedures are not established (ranging from EUR 10,000 to EUR 50,000).

17. Are there any other practical steps that companies can take to prepare for the new whistleblowing regime?

Yes. The companies which fall under the scope of the Decree should

- set up a whistleblowing procedure
- implement reporting channels compliant with the Decree’s provisions
- train personnel and relevant stakeholders.

The way forward

While most national transposition acts are largely consistent with the Directive, there are some variations in each jurisdiction with some legislators having gone beyond the minimum requirements. Companies, in particular ones that operate internationally, are therefore well advised to familiarise themselves with the new legal frameworks, taking into account the specifics of each country. Compliance in one Member State does not necessarily result in compliance in all other Member States as well.

In the past, employees and other stakeholders had limited possibilities to report wrongdoing within the company without potentially placing themselves at risk. Whistleblowing policies or tools have been in place almost exclusively, and on a voluntary basis, in large and international company groups.

Aside from the legal requirements imposed by the Directive, establishing an effective Whistleblowing arrangement is increasingly seen as a useful means of improving a company's public image from a corporate perspective. Additionally, organisations have an opportunity to identify and manage risk at an early stage, so as to avoid or limit financial and reputational damage.

Despite all efforts, and almost one and a half years after the deadline for transposing the Directive into national law, not only do many companies still struggle to set up compliant internal reporting channels, but some legislators also need to take further action. At the time of writing, there are seven Member States that are still in the process of putting in place national legislation on the protection of Whistleblowers.

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