

The clock is ticking – whistleblowing systems must be set up

For the first time, the EU is introducing whistleblower protection

The EU Whistleblower Directive (Directive (EU) 2019/1937, the "Directive")

What is it?

- ▶ The first multinational legal framework that defines minimum standards to protect whistleblowers
- ▶ Requiring many companies to have a whistleblowing system in place by 17 December 2021
- ▶ Whistleblowers will be protected from retaliation even if they:
 - ▶ Ignore internal systems
 - ▶ Immediately turn to external parties (authorities, as opposed to the media/public domain)

What should executives do about it?

- ▶ Set up whistleblowing systems that comply with the new legal requirements in good time
- ▶ Implement these systems in their company's corporate culture, not least because of reputational issues, but also for reasons of personal liability

"There were no whistleblower protections that would've protected me – and that's known to everybody in the intelligence community. There are no proper channels for making this information available when the system fails comprehensively."

Edward Snowden



Understand how the EU Whistleblower Directive affects your business

To whom does the Directive apply?

- ▶ **>249 employees:** It will be mandatory for companies with more than 249 employees to put in place internal reporting channels until 17 December 2021.
- ▶ **50 to 249 employees:** Same as above but implementation deadline until 17 December 2023.
- ▶ **<50 employees:** Companies with fewer than 50 employees are exempt from the obligation to establish internal reporting channels under the Directive. Note: such companies may implement such a system for other (business-sensible) considerations e.g. future growth.

Are any penalties incurred?

- ▶ The Directive allows Member States considerable freedom with regard to sanctions and claims for damages. However, penalties shall be effective, proportionate and dissuasive to ensure whistleblower protection.
- ▶ Implicit reputational risk if internal system is weak that immediately external reports are filed

What are typical obstacles in implementing a whistleblower system?

- ▶ Information and consultation requirements/consent requirements
- ▶ Implementation of technical tool
- ▶ Data protection requirements
- ▶ Changing the corporate culture

What are the key points to consider?

1. Scope

The Directive governs only whistleblowing on breaches of certain EU laws including, inter alia, violations in the areas of financial services, prevention of money laundering, public procurement, competition rules and consumer protection which will in any case apply by the end of the year. The Member States could, however, implement these regulations more stringently.

2. Reporting Channels

Reporting channels must be available in (i) writing and/or verbally and (ii) upon request in person; third parties could be authorized to receive reports (e.g., external reporting platform providers, external counsel, auditors).

3. Confidentiality

Confidentiality of the whistleblower and any person named in the report must be ensured.

4. Follow-up

The company must designate an impartial person or division responsible for the follow-up of reports (e.g., the CCO); diligent follow-up on reports must be ensured with the exception of anonymous reports depending on national law.

5. Feedback to Whistleblower

Whistleblowers must receive a confirmation of receipt of a report and information on its handling within given timeframes.

6. Whistleblower Protection

The company must ensure measures to effectively protect the whistleblower from any form of retaliation.

7. Data Protection

The company must ensure compliance with the GDPR; in particular, reports may not to be archived longer than necessary and appropriate.

Our EY Whistleblowing System

To help you tackle the upcoming challenges, we offer a **web-based whistleblowing system** which complies with the Directive requirements. Additionally, we support you with **modular services** regarding system roll-out and processing of whistleblower reports.

Contact Data – We are happy to help

Please feel free to **contact us** at any time. We are happy to support you all the way - legal advice, implementation of the tool and managing the reporting process.



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