

# THE NEW EU WHISTLEBLOWER PROTECTION DIRECTIVE

## KEY TAKE-AWAYS

WHISTLEBLOWER  
PROTECTION  
ACT

ELLINT Employment &  
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International





# WHISTLEBLOWER PROTECTION DIRECTIVE

In October 2019, the European Union adopted the Directive on the protection of persons who report breaches of Union law (Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019), commonly referred to as the “Whistleblower Protection Directive”. The Whistleblower Protection Directive follows an acknowledgement from the European Union that there was not sufficient protection for whistleblowers who report breaches of EU law.

The Whistleblower Protection Directive provides a new legal framework for the protection of persons who choose to report breaches of EU law («whistleblowers») with the aim of encouraging whistleblowers. The Whistleblower Protection Directive sets minimum standards of the subjects of reports that will be protected, and Member States are free to expand on these. We have set out country specific information below for a summary on how they have done so. The purpose of the Whistleblower Protection Directive is to strengthen the enforcement of EU law and EU policies in specific areas by setting common minimum standards that protect people who report infringements of EU law.

The EU Member States are obliged to implement the Directive’s provisions into national legislation by 17 December 2021, with the exception that organizations with between 50 and 249 workers will have until 17 December 2023 to introduce internal reporting channels (see below).

The Whistleblower Protection Directive obliges member states to ensure that all forms of retaliation against whistleblowers by their employers are prohibited. The concept of who can be a whistleblower is broadly defined in the Whistleblower Protection Directive and includes not only workers, but also shareholders, persons supervised by contractors or suppliers, as well as potential employees who may obtain information in the course of the recruitment process. Member states must ensure that penalties for retaliation are proportionate and dissuasive.

Additionally, the Whistleblower Protection Directive obliges legal entities with over 50 workers in the private or public sectors to establish reporting channels for reports of infringement of EU law (“whistleblower schemes”), and to ensure that in such schemes, the whistleblower’s identity is kept confidential. In addition, Member States are required to establish one or more independent and autonomous external whistleblower schemes, which can also receive and process alerts. The designated external authority must be competent to receive, give feedback and follow up on reports.

In this document, [ELLINT](#) focuses on a few key points of the implementation of the [Whistleblower Protection Directive](#) in a number of [jurisdictions](#), namely, [Belgium](#), [Denmark](#), [France](#), [Germany](#), [Ireland](#), [Italy](#), [Luxembourg](#), [Netherlands](#), [Poland](#), [Romania](#), and [Spain](#) and also looks at the current protection of whistleblowers in the [UK](#), [China](#) and [Switzerland](#).

ELLINT can provide you with advice, support and template documents to assist with compliance with the Whistleblower Protection Directive and the contact details for lawyers within specific jurisdictions can be found below.


In addition ELLINT has been working with a partner, Got Ethics, which can assist companies in establishing whistleblower schemes.





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Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>Apart from sector-specific obligations (financial sector and anti money laundering) and regulations in the public sector, there is currently no general legal framework for the private sector regulating internal whistleblowing procedures, as required by the Whistleblower Protection Directive.</p> <p>The transposition of the Whistleblower Protection Directive into national legislation will thus certainly have an impact on companies in the private sector, as their employees will be able to report violations of European legislation on several specific subjects, and to benefit from specific protection against an unfavorable treatment by their employer if they do so.</p> <p>However, even with the approaching deadline for the implementation of the Whistleblower Protection Directive, there is, to our knowledge, not yet a proposed bill from the Belgian government to prepare for the implementation. It is even possible that Belgium will not meet the deadline for the implementation of the directive, since Belgium has missed such deadlines before.</p> <p>In March 2020, a motion for a resolution of this topic was submitted to the Belgian Parliament by the Green party, but it is very uncertain if this initiative will receive support from the current (new) government.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	In absence of a proposed bill, it is difficult to predict if Belgian legislation will also impact smaller companies employing less than 50 employees.
Has the national implementation law extended any areas of the Directive?	In absence of a proposed bill, it is difficult to predict if the legislation will just cover the minimum standards or will go further.
Does national law allow for anonymous whistleblowing reports?	There is currently no general framework for anonymous whistleblowing reports.
What measures have been taken in national law to protect the whistleblower?	<p>Existing arrangements, particularly in the public sector, provide for extensive whistleblower protection. Whistleblowers are protected from suffering from retaliation, unfavorable or discriminatory treatment.</p> <p>We assume that the legislation transposing the EU Directive should at least include an equivalent protection regime.</p>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	After the transposition of the European Directive, Belgian law should logically contain sanctions applicable to natural or legal persons who retaliate against whistleblowers, but in absence of a proposed bill, we cannot provide any further details on this matter.
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	In absence of a proposed bill, we cannot provide any further information on this matter.



Summary	<p>There is no legislation dealing with the protection of whistleblowers currently in force in China. Individuals are encouraged to report whistleblowing cases either following their employers’ internal procedures and policies when and if they exist, or directly addressing the authorities.</p> <p>In parallel, the new Civil Code of the People’s Republic of China promulgated in May 2020 took effect on 1 January 2021, covering the protection of people’s rights. New protective principles have been introduced, for example, with regards to sexual harassment, as well as obligations for employers to put procedures and policies into place to manage complaints and implement sanctions.</p>
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Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>On 25 June 2021, the Danish parliament adopted the Whistleblower Act (the “Act”), which implements the Whistleblower Protection Directive. The Whistleblower Protection Directive is a consequence of the EU commission reporting the need for protection of whistleblowers, following several scandals about fraud and harassment, in which whistleblowers have played a crucial role.</p> <p>Prior to the implementation of the Whistleblower Protection Directive, protection for whistleblowers in Denmark only existed for a few specific sectors, such as the financial sector. In addition, the implementation of the Money Laundering Act also introduced whistleblower protection for lawyers, insurance companies and pension funds, in addition to accountants and auditing firms (approved under the Auditors Act), real estate agents and real estate companies, tax advisers, external accountants, currency exchange companies and gambling providers. In these sectors, employees who file a report through a mandatory whistleblowing scheme enjoy special protection against unfavourable treatment or unfavourable consequences, such as dismissal on the grounds that they have “blown the whistle”.</p> <p>Furthermore, in the area of offshore oil and gas activities, there are also rules on whistleblower schemes where health and safety problems can be reported. In most areas, a de minimis threshold has been introduced to ensure that companies with five or fewer employees are exempt from implementing a whistleblower scheme. Since 1 November 2020, State whistleblower schemes have been established on the basis of a joint guideline issued by the Ministry of Justice. In some areas, such as the Ministry of Justice, the Ministry of Defense and the Ministry of Taxation, there have been whistleblower schemes since 2019.</p> <p>The implementation of the Whistleblower Protection Directive will mark a change in Denmark’s protection of whistleblowers on the basis that protection will be extended to employees in all sectors.</p> <p>The new Act provides that the internal whistleblowing scheme may be run by an external party appointed by the company, such as lawyers, by way of example.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	Companies with fewer than 50 employees, in principle, are not required to establish a whistleblower scheme unless they fall within one of the protected sectors mentioned above. However the Act allows the Minister of Justice, after a specific risk assessment of a particular sector and after negotiation with the relevant ministers, to introduce further rules that employers with fewer than 50 employees can also be required to establish internal whistleblower scheme within further sectors.
Has the national implementation law extended any areas of the Directive?	<p>The Act applies not only to the reporting of non-compliance with specific areas and issues within EU law that are subject to the underlying EU Directive, but also to other types of serious breaches or other serious matters.</p> <p>According to the explanatory notes to the Act, other serious matters include cases of sexual harassment and other serious interpersonal conflicts in the workplace, including serious harassment. Consequently, it will be possible to report serious sexual harassment or other serious harassment taking place in the workplace through the whistleblowing scheme.</p> <p>Information on other matters, including breaches of internal guidelines of a less serious nature, such as sick leave, private use of office supplies, etc., and information on less serious personnel-related conflicts in the workplace will, in principle, not be covered by the scope of the legislation. Such complaints should instead be submitted to the immediate manager, personnel / HR department or union representative under the company’s normal grievance process.</p> <p>As a result of objections during the consultation of the provisions of the Act, it is now permissible for group companies to operate one whistleblowing scheme for all companies within the group. Under the original bill, group companies with more than 249 employees could not establish a common whistleblower scheme for the group, and therefore were obliged to establish a whistleblower scheme for each individual group company. There was strong objection to this provision from companies operating within a group structure, due to the administrative and cost burden of having to establish individual company schemes. Against this background, the Ministry of Justice proposed an amendment to the bill making the establishment of a group-wide whistleblower scheme (regardless of the size of the group companies) possible. However, there is some doubt as to whether this is in line with the provisions of the whistleblower directive which underpins the Act. The Ministry of Justice is in dialogue with the European Commission on this and we understand the European Commission, may, if necessary, propose an amendment to the directive. Larger group companies are therefore recommended to follow the developments.</p>
Does national law allow for anonymous whistleblowing reports?	The Act does allow for anonymous whistleblowing reports to be made.
What measures have been taken in national law to protect the whistleblower?	According to the Act, a whistleblower must not be subjected to any retaliation as a result of having made a report or publication in accordance with the law. Retaliation for these purposes shall be understood as being any consequence of such a report or publication that causes or may cause the whistleblower unjustified damage, including a dismissal as a result of an employee having “blown the whistle”.
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	<p>The Act provides that the whistleblower is entitled to compensation, which, according to the explanatory notes to the Act, must be fixed in accordance with the level of compensation under the Danish Consolidation Act on Equal Treatment of Men and Women as regards Employment and Maternity Leave. In the event that an employee is dismissed contrary to applicable rules, the employee may claim re-employment. It is for the employee to decide whether he or she wants to claim re-employment or whether he or she wants to claim compensation instead.</p> <p>The intention is also for the rules on the reverse burden of proof to be applied. Therefore, if a whistleblower has reported his or her concerns pursuant to the Act, the employer will have the burden of proving that the detriment suffered by the whistleblower did not constitute a retaliatory measure caused by the reporting.</p> <p>However, if a whistleblower has knowingly reported wrong or misleading information, or if a person, deliberately or with gross negligence, has breached his or her duty of confidentiality, then pursuant to the Act, he or she may be punished by a fine. The employer may similarly be punished by fines for failure to comply with its legal obligations under the Act.</p>
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	As a result of the Act, the Danish Data Protection Agency will set up an impartial and independent external whistleblower scheme to process reported breaches of the Act.



Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>In France since the act nr. 2016-1691 of 9 December 2016 known as “Loi Sapin 2”, whistleblowers have benefited from a statutory protection. This act grants rights and protection to whistleblowers when specific conditions are met and a specific procedure followed. The protection granted by the Whistleblower Protection Directive is notably different from the current French legislation in following respects:</p> <ol style="list-style-type: none"> <li><b>The reporting procedure</b> The French reporting procedure provides for 3 stages: reporting (i.) internally to a manager or a designated person (ii.) if there has been no answer within a reasonable period, then to an administrative or judicial authority or to a professional body and finally (iii.) if no answer is given by those authorities within 3 months, to the public. Conversely, the Whistleblower Protection Directive allows the immediate use of external “independent and autonomous” reporting channels.</li> <li><b>The scope of the protection</b> Currently, French law only grants statutory protection to the whistleblower themselves. The Whistleblower Protection Directive extends the protection to facilitators, i.e. any person assisting or helping the whistleblower (colleagues, family, etc).</li> <li><b>Knowledge of the facts</b> French law only grants protection to whistleblowers who had knowledge of the reported facts personally. Conversely, the Directive grants protection to whistleblowers who reported facts known by third parties.</li> <li><b>Motivation of the whistleblower</b> French law requires the whistleblower to make their report selflessly and with good faith. The Whistleblower Protection Directive does not take into account the whistleblower’s personal motivation. It is only necessary that they have reasonable grounds to believe that the information reported was genuinely correct at the time of reporting.</li> </ol>
Does the national implementation law include any rules for companies with fewer than 50 employees?	There is no national law implementing the Whistleblower Protection Directive so far. The Government launched a public consultation on implementation that ended on 21 March 2021.
Has the national implementation law extended any areas of the Directive?	When article 2 of the Directive provides for a limitative list of the areas included in its scope (without prejudice for the Member State to extend it, article 2.2) and article 4 specifies the personal scope, French law does not limit the scope of its whistleblower regulations, except national defence secrets, medical confidentiality and legally protected professional privilege.
Does national law allow for anonymous whistleblowing reports?	Current French law <u>does not</u> provide for anonymous whistleblowing reports. The national data protection authority (“CNIL”), however, recommends processing anonymous reports.
What measures have been taken in national law to protect the whistleblower?	<p>Whistleblowers are protected against any discrimination and should not suffer any measure that would be taken because of the report they made (article L.1132-3-3 of the French Employment Code). Any dismissal based on the report would be found null and void.</p> <p>The French Criminal Code provides for an absence of criminal responsibility of the person who fulfils the conditions to be a statutory whistleblower in case they breach a secret protected by law, except for if their disclosure relates to national defence, medical confidentiality and legal professional privilege (article 122-9 French Criminal Code).</p> <p>Furthermore, any hindrance to a report is punished of up to 1 year of imprisonment and a fine of up to €15,000 (article 13 of the 9 December 2016 Act).</p> <p>Whistleblowers may also be indemnified for the harm suffered as a consequence of their report.</p>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	See previous answer regarding the whistleblower protection.
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	Currently the external competent authorities are the judicial, administrative or professional authorities (“Défenseur des Droits”).





Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p><b>In Germany, only a draft of the Whistleblower Protection Act was recently available.</b> In the meantime, however, the draft Whistleblower Protection Act has been taken off the immediate agenda again. Due to the upcoming new elections in Germany (25 September 2021), a timely implementation by 17 December 2021 is uncertain. The following comments therefore only refer to this preliminary draft.</p> <p>The existing sector-specific protection of whistleblowers (e.g. occupational health and safety, certain economic crimes) will be extended to all criminal and administrative offenses through the implementation of the Whistleblower Protection Directive. In addition, all companies with more than 50 employees as well as public institutions, authorities and municipalities with a population of 10,000 or more must now introduce whistleblower systems. Previously, companies were only required to enable a complaints procedure for certain breaches of regulations (such as the right to complain in the event of discrimination or disadvantages suffered by employees) or companies in certain sectors (such as credit institutions, the Federal Financial Supervisory Authority) were required to introduce structures for complaints management with regard to certain breaches of regulations.</p> <p>The protection of whistleblowers against retaliation is significantly expanded. Previously, employees were only explicitly protected from retaliatory measures if they attempted to remedy the infringement internally before turning to an external body.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	The national implementation law is in principle applicable to companies of any size. However, the law differentiates with regard to the obligation to set up internal whistleblowing systems. In principle, only companies with at least 50 employees are obliged to set up internal whistleblowing systems. In addition, companies with fewer than 50 employees in certain sectors and areas (e.g. securities brokerage firms and data provision services) are also obliged to set up internal reporting offices.
Has the national implementation law extended any areas of the Directive?	<p>The proposed bill applies not only to non-compliance with matters of EU law subject to an EU Directive but to all criminal and administrative offenses.</p> <p>The proposed bill will provide protection to all persons who have obtained information about violations in their professional environment and this comprehensive definition goes beyond the minimum required by the Directive.</p> <p>In addition, reporting bodies must protect not only the identity of the whistleblower, but also that of persons who are the subject of the whistleblower's report, or named therein.</p>
Does national law allow for anonymous whistleblowing reports?	It does not prohibit anonymous whistleblowing. But, the draft law does not provide for an obligation to track anonymous reports. Neither internal nor external reporting bodies are required to maintain technical means or procedures for anonymous reports. Nevertheless, anonymous whistleblowers are covered by the protective provisions if their initially concealed identity becomes known.
What measures have been taken in national law to protect the whistleblower?	<p>Retaliatory measures against whistleblowers are prohibited. This also applies to threats and attempts to exercise retaliation. This includes all unjustified disadvantages, such as dismissal, denial of promotion, changed assignment of duties, disciplinary measures, discrimination or bullying, which a whistleblower suffers as a result of a report or disclosure. In this respect, a reversal of the burden of proof applies. In the event that a whistleblower suffers a disadvantage in connection with his or her professional activities following a report or disclosure of a violation, the other party must demonstrate and prove that the disadvantage was based on sufficiently justified reasons or was not based on the report or disclosure. Damage resulting from unjustified retaliatory measures must be compensated.</p> <p>In addition, obtaining information and accessing it will not be unlawful provided that criminal laws are not violated in doing so. Nor is a report or disclosure that was made in good faith provided that there was sufficient reason to believe that it was necessary to uncover a violation unlawful.</p>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	<p>If a reporting person suffers retaliation as a result of a whistleblowing complaint, the retaliator commits an administrative offense and can be fined up to EUR 100.000.</p> <p>A fine of ten times the amount, i.e. 1 million euros, may be imposed on a natural person who is, for example, a member of a body authorized to represent a legal entity or who otherwise acts responsibly for the management of the company, which includes supervising the management or otherwise exercising supervisory powers in a managerial position.</p>
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	Responsibility for external reporting is to be assigned centrally to a federal agency, which is to be located at the Federal Data Protection Commissioner. The Federal Financial Supervisory Authority (BaFin) is to be primarily responsible for violations of financial market law and accounting law. For reports concerning departments of the respective federal state, the federal states can also set up an additional external reporting office.





Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>Ireland’s current whistleblowing legislation – the Protected Disclosures Act 2014 (“the 2014 Act”)– provides significant protection already for “whistleblowers”, and accomodates most of the Whistleblower Protection Directive’s key provisions.</p> <p>Some material changes, however, will nonetheless be imposed by the Whistleblower Protection Directive, such as</p> <p>a) the expansion of the definition of a whistleblower to include legal persons, as well as natural persons,</p> <p>b) the expansion of the definition of a “relevant wrongdoing” to include such matters as breaches of EU law, environmental protection laws, and public health laws, and</p> <p>c) the requirement for private sector companies in the financial services sector, or employing at least 50 employees, or with an annual turnover of at least €10m, to have whistleblowing policies in place.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	<p>At present, only public sector employers in Ireland are required to have a whistleblowing policy in place.</p>
Has the national implementation law extended any areas of the Directive?	<p>“Relevant wrongdoings” in Irish law include criminal offences generally speaking, miscarriages of justice, and health and safety risks. In other words, the reporting of such matters by employees is protected by the 2014 Act.</p>
Does national law allow for anonymous whistleblowing reports?	<p>Subject to certain exceptions, Irish law requires that the identity of the maker of a protected disclosure be kept confidential.</p>
What measures have been taken in national law to protect the whistleblower?	<p>Employees who have been penalised by their employer for having made a protected disclosure can be awarded compensation of up to 260 weeks’ pay. In addition to this, where an employee has been dismissed for having made a protected disclosure, he / she may seek a court order from the Circuit Court maintaining his / her salary until the hearing of his / her claim for unfair dismissal. Following the hearing, re-instatement may also be awarded.</p>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	<p>See above.</p>
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	<p>By way of secondary legislation, Irish law provides for a wide range of external bodies to whom protected disclosures may be made by employees, including the Office of the Director of Corporate Enforcement, the Office of the Revenue Commissioners, the Central Bank of Ireland, and the Broadcasting Authority of Ireland.</p>





Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>At the moment in Italy, the protection of those who report crimes or irregularities of which they have become aware in the context of a public or private employment relationship is ensured by Law 179/2017 in a very specific context, namely the protection of an employee or collaborator who reports unlawful acts of which they have become aware by virtue of their office and which entail administrative liability deriving from crime committed by the entity or company.</p> <p>Directive 2019/1937 aims to give uniformity to heterogeneous and fragmented national regulations, in order to enhance the protection of persons who report breaches of law.</p> <p>The aforementioned European regulation will undoubtedly affect Italian national law.</p> <p>The Whistleblower Protection Directive does differentiate between the protection of whistleblowers from the public and the private sectors, while such differentiation is currently to be found in the above-mentioned Italian law.</p> <p>The area of application, i.e. who will qualify as a whistleblower, of the Whistleblower Protection Directive is broader than that of the Italian law.</p> <p>The implementation of the Whistleblower Protection Directive in question is carried out by means of the European delegation law which grants the government legislative powers exclusively for the implementation of European directives.</p> <p>On 31 March 2021 the Chamber of Deputies (Lower House) concluded its examination of the draft European delegation law 2019 - 2020 (Lower House Bill C. 2757).</p> <p>The measure is now being examined by the Senate (Senate Bill S. 1721-B).</p> <p>Article 23 of the aforementioned bill sets forth that the Government, in implementing the Directive, will amend the existing legislation on the protection of whistleblowers reporting breaches of which they have become aware within a public or private employment context, will ensure its coordination with the existing provisions, making the necessary repeals and adopting the appropriate transitional provisions, will exercise the option that allows the introduction or maintenance of the provisions more favourable to the rights of whistleblowers and those indicated by the Directive, in order to ensure the highest level of protection and safeguard to these persons.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	We do not have such a level of detail at the moment.
Has the national implementation law extended any areas of the Directive?	Please see above.
Does national law allow for anonymous whistleblowing reports?	<p>Within the private sector, Law 179/2017 complements Legislative Decree 231/2001 regarding the administrative liability of legal persons, companies and associations, including those without legal personality.</p> <p>The business must provide:</p> <ul style="list-style-type: none"> <li>One or more channels that allow «persons who hold positions of representation, administration or management of the entity or one of its organisational units with financial and functional autonomy as well as persons who exercise, also de facto, the management and control of the same» (in brief: directors and managers) and «persons subject to the direction or supervision of one of the persons referred to (in brief: employees and collaborators, as we shall see further on) to submit «detailed reports of unlawful conduct, relevant under this Decree and based on precise and consistent facts, or of breaches of the organisation and management model of the entity, of which they have become aware by reason of their functions», to protect the integrity of the entity. The legislator's emphasis is therefore placed in particular on the need that the disclosure aims to avoid damage or negative consequences for the organisation in which the 'whistleblower' works;</li> <li>These channels must ensure the confidentiality of the identity of the whistleblower in the handling of the report;</li> <li>There must be at least one alternative reporting channel capable of ensuring, by computerised means, the confidentiality of the reporter's identity;</li> <li>There must be at least one alternative reporting channel capable of ensuring, in computerised form, the confidentiality of the whistleblower's identity;</li> <li>No direct or indirect retaliatory or discriminatory action may be taken against the whistleblower for reasons directly or indirectly linked to the report;</li> </ul> <p>Disciplinary sanctions are to be imposed on any person who breaches the measures for the protection of the whistleblower, as well as on any person who maliciously or negligently makes a report that turns out to be unfounded.</p>
What measures have been taken in national law to protect the whistleblower?	Please see above.
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	Please see above.
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	The law also specifies that the adoption by the employer of discriminatory measures against whistleblowers may be reported to the National Labour Inspectorate, for measures within its competence, either by the whistleblower or by the trade union indicated by the whistleblower. In addition, retaliatory or discriminatory dismissal of the whistleblower shall be deemed null and void, as is a change of work duties under Article 2103 of the Civil Code and any other retaliatory or discriminatory measure taken against the whistleblower.





Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>The Whistleblower Protection Directive goes further than the actual Luxembourg Law which:</p> <ul style="list-style-type: none"> <li>only protects employees and civil servants, so that it will be necessary to extend the personal scope of the protected persons;</li> <li>only covers reporting of offences related to corruption, trading in influence and illegal interest, so it will be necessary to extend the material scope;</li> <li>does not require companies to have an internal whistleblowing procedure in place, so that the new legislation will need to introduce these obligations into the national law.</li> </ul>
Does the national implementation law include any rules for companies with fewer than 50 employees?	Regarding the national implementation law, the Luxembourg Ministry of Justice has announced that it plans to widen the scope of the application of the Directive to all national law and to present its draft bill to transpose Directive (EU) 2019/1937 in the first half of the year 2021 .
Has the national implementation law extended any areas of the Directive?	For the moment, in the absence of the draft law, this question cannot be answered.
Does national law allow for anonymous whistleblowing reports?	The law of February, 13 2011 reinforcing the means to fight corruption does not provide for anonymous whistleblowing reports.
What measures have been taken in national law to protect the whistleblower?	<p>Whistleblowers are currently protected under the law of February, 13 2011 which introduced two articles (L.271-1 and L.271-2) into the Labour Code to provide a framework for their protection.</p> <p>Thus, in accordance with the legal provisions in force, an employee may not be subject to reprisals :</p> <ul style="list-style-type: none"> <li>because of his protest or refusal to accept a fact which he/she considers, in good faith, to constitute illegal taking of interest, corruption or trading in influence, whether this fact is the work of his/her employer or any other hierarchical superior, work colleagues or, external persons in relation with the employer (article L.271-1 (1) of the Labour Code);</li> <li>for having reported corruption, trading in influence or illegal interest to a superior or to the competent authorities or for having testified about it (article L.271-1 (2) of the Labour Code).</li> </ul>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	<p>Any contractual stipulation or act to the contrary, and in particular any termination of the employment contract in violation of these provisions, is null and void (article L.271-1 (3) of the Labour Code).</p> <p>Thus, in the event of termination of the employment contract, the whistleblower employee may assert his/her rights and request within 15 days that his/her dismissal be declared null and void by the President of the competent labour court, who will rule on the matter as a matter of urgency (article L.271-1 (4) of the Labour Code).</p> <p>A general appeal for unfair dismissal is also available to the whistleblower employee who has not requested the nullity of his/her dismissal (article L.271-1 (7) of the Labour Code).</p>
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	For the moment, in the absence of the draft law, this question cannot be answered.



Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	No significant change is expected. The Whistleblower Protection Directive more or less creates a second channel for a breach of Union rules such to be implemented by employers.
Does the national implementation law include any rules for companies with fewer than 50 employees?	No, it does not. Currently the law provides for the same threshold.
Has the national implementation law extended any areas of the Directive?	No, it has not.
Does national law allow for anonymous whistleblowing reports?	No, in principle it does not.
What measures have been taken in national law to protect the whistleblower?	Prohibition to create any disadvantage to the one reporting and their family. This includes employment actions e.g. termination and disciplinary measures. Indemnification from breach of duties such as secrecy for the one reporting. A reversed burden of proof.
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	Such breach of obligation can have civil law consequences such as liability for damages.
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	There is a list of competent authorities designated each in their own area of activity.





Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>It will be a significant change in the light of the current legal status where there are no binding regulations in this field covering wider group of entrepreneurs.</p> <p>However, the Polish government has not yet announced any proposed bill aiming at implementation of the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (the «<b>Directive</b>»).</p> <p>In view of the implementation deadline of the end of 2021, it is likely that the relevant legislative work in Poland can be expected to begin about mid-2021.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	<p>It is expected that after the implementation of the Directive only organisations employing more than 50 people (and all entities operating in the financial sector) will be obliged to implement channels for reporting irregularities anonymously.</p> <p>However, as no proposed bill implementing the Directive has been announced yet, it may be regulated differently.</p>
Has the national implementation law extended any areas of the Directive?	Unfortunately, no proposed bill implementing the Directive has been announced yet.
Does national law allow for anonymous whistleblowing reports?	Yes, to some limited extent explained in response to the questions below.
What measures have been taken in national law to protect the whistleblower?	<p>Despite the lack of a law regulating this problem in a comprehensive way, there are a few regulations dedicated to whistleblowers in Poland, which are limited to specific sectors of the economy – these include in particular:</p> <ol style="list-style-type: none"> <li>1. Labour Code provides for a general protection of an employee who has exercised the rights due to violation of the principle of equal treatment in employment or a person(s) who has provided support to such an employee (which depending on circumstances may also apply to whistleblowers). However, it does not impose any obligation to prepare formal procedures or internal policies for reporting violations.</li> <li>2. Banking Law provides for protection at least against repressive actions, discrimination or other types of unfair treatment of employees reporting violations of the law. Banks were obliged to establish procedures for anonymous reporting of violations.</li> <li>3. Act on Prevention of Money Laundering and Financing of Terrorism, which applies to a limited circle of financial sector entities, i.e. banks and branches of foreign banks, branches of credit institutions, cooperative savings and credit unions. This creates an obligation to develop and establish internal procedures for anonymous reporting by whistleblowers, the obligation to keep their identity confidential and administrative penalties for entrepreneurs for violations of the provisions of the Act.</li> <li>4. Act on Combating Unfair Competition regulates the prevention and combating of unfair competition in business activities and also covers the protection of whistleblowers, excluding liability for disclosure, use or acquisition of information constituting a business secret, among other things, when this is done for the purpose of an interest protected by law or to disclose irregularities.</li> <li>5. Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies also includes provisions on reporting by whistleblowers.</li> </ol>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	The current legal regulation of whistleblower protection in Poland is very fragmented. In the current legal status (before the implementation of the Directive), there are no general regulations which would refer clearly to retaliation. However, for example, in the Labour Code there is a rule that the use by an employee of the rights arising from the violation of the principle of equal treatment in employment, or providing any form of support to an employee exercising the rights due to violation of the principle of equal treatment in employment, may not be the basis for unfavorable treatment of the employee, and may not cause any negative consequences for the employee, in particular, it may not constitute a reason justifying the termination of the employment relationship by the employer or its termination without notice.
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	Unfortunately, no proposed bill implementing the Directive has been announced yet.



Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>At the present moment, in Romania, the protection of whistleblowers is regulated by Law no. 571/2004 on the protection of personnel from public authorities, public institutions and other units that report violations of the law (“<b>Law no. 571/2004</b>”).</p> <p>In order to implement the Whistleblower Protection Directive, the Ministry of Justice launched last month, for public debate, a draft of law (“<b>Draft</b>”) that aims to transpose the directive into Romanian legislation and to repeal the provisions of the above-mentioned law. The most significant changes imposed by the Draft to the current legislation are:</p> <ul style="list-style-type: none"> <li>• The most important change provided by the Draft is the extension of its application for whistleblowers operating in private legal entities. Currently, the whistleblower protection provided by Law no. 571/2004 operates solely for whistleblowers which work for public entities.</li> <li>• The access to reporting channels is to be made by way of a cascading reporting model, i.e. whistleblowers are encouraged to first use the internal channels within the entity in which they operate, before addressing external reporting channels or making a public disclosure.</li> <li>• The Draft extends the category of persons protected against retaliation for disclosure, such as to (i) the natural persons who assist the whistleblower in the reporting process in a professional context, and whose assistance should be confidential (i.e. facilitators), (ii) third parties who have links with the whistleblower and who may suffer retaliation in a professional context, such as colleagues or relatives of the reporting person, and (iii) the legal entities that the reporting person owns, works for or with whom it has professional relations.</li> <li>• The Draft provides exemption of liability for the disclosure and access to information concerning violations of the law in all cases of reporting (i.e. internal, external and/or public disclosure).</li> </ul> <p>However, note should be made that the Draft is not provided in a final form and may suffer amendments/supplements during the public debate and/or the legislative process.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	<p>As a general principle, the Draft provides an exemption for companies which have less than 50 employees from the obligation to set up internal reporting channels. However, persons working in private entities with less than 50 employees have the possibility of filing an external report, directly to the competent national authorities.</p> <p>The exception is not an absolute one, as it does not apply to legal entities with less than 50 employees which fall under the specific legislation on services, products and financial markets, as well as the prevention of money laundering and terrorist financing, transport safety and environment protection. They will continue to have the obligation to identify or establish internal reporting channels.</p>
Has the national implementation law extended any areas of the Directive?	<p>The scope of the Draft is more comprehensive than the scope of the Whistleblower Protection Directive considering that it is not limited to certain areas, but applies to non-compliance with legal provisions in all areas, as well as to actions and omissions that contravene the object or purpose of the legal provisions (including non-compliance with deontological and professional norms).</p>
Does national law allow for anonymous whistleblowing reports?	<p>According to the provisions of the Draft, the anonymous whistleblowing reports do not need to be investigated. However, the anonymous whistleblower will be protected against any retaliation if his/her identity is discovered.</p>
What measures have been taken in national law to protect the whistleblower?	<p>In outlining the protection mechanism for whistleblowers, the Draft establishes the prohibition of retaliation against whistleblowers and provides a non-exhaustive list of the many forms that retaliation can take.</p> <p>In addition, in order to create a mechanism for the protection of the whistleblowers and the sanctioning of persons within the public authorities and institutions or private entities who resort to retaliation, the Draft provides for the possibility of the whistleblower to obtain, by way of the presidential ordinance, the suspension of the application of the measures it considers retaliation. The whistleblower has this possibility even if there is no judgment regarding the merits of the retaliation.</p> <p>Also, the Draft provides that the burden of proof is placed on the employer. Thus, the employer must justify in court that the contested measure is based on justified grounds other than those relating to the (public) disclosure performed by the whistleblower.</p> <p>At the same time, the Draft stipulates that, in the case the measure is found to represent retaliation, the court may annul the measure, restore the parties to their previous state, award damages, terminate the measure and prohibit its future occurrence, as well as any other measures to end the retaliation.</p>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	<p>In addition to the remedial measures detailed above, the court shall, in all cases, also order the publication on the website of the authority, public institution or legal entity, as well as on the website of the National Integrity Agency, an extract of the court’s decision.</p> <p>Also, in order for the whistleblower to obtain a quick recovery of the damages suffered as a result of retaliation, the Draft establishes a joint liability of the natural person who ordered, in bad faith, the retaliation measure with the authority, public institution or legal entity.</p>
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	<p>Given that the Whistleblower Protection Directive requires Member States to set up independent and autonomous external reporting channels for the receipt and processing of infringement information by designating competent authorities to receive reports, provide feedback and take action following reporting, the Draft designates the National Integrity Agency as the competent authority within the meaning of the above.</p> <p>At the same time, taking into account the specific provisions of the law, the Draft recognizes the quality of competent authority to other external channels as well (such as the Financial Supervisory Authority, the Romanian Naval Authority, the Competition Council and the National Bank of Romania), but also the possibility for the National Integrity Agency to delegate the power to process reports, depending on their topic, to other authorities.</p>



Does the implementation of the Whistleblower Protection Directive mean a significant change in the current protection of whistleblowers?	<p>It will be applied to certain breaches such as those related to public procurement, financial markets, health security and personal privacy.</p> <p>The obligation to have an internal reporting channel will be mandatory for public entities, but it will also affect private companies with 50 or more employees.</p> <p>The reporting channels must meet requirements such as: guarantee of confidentiality and diligent processing; acknowledgment of receipt; the establishment of specific and reasonable deadlines; the appointment of impartial persons to process complaints. Once the internal channels are exhausted, the external channels will be used.</p> <p>Protection is afforded to individuals who make public disclosures provided that the breach triggers an imminent or overt danger to the public interest or when there is a risk of retaliation or not many possibilities that the breach is solved using custom outside means.</p> <p>A catalog of prohibited retaliation is established, which includes threats, dismissals, demotions, discrimination, damage to reputation, etc.</p>
Does the national implementation law include any rules for companies with fewer than 50 employees?	<p>It is expected that after the implementation of the Directive only organisations employing more than 50 workers (entities operating in the financial sector without such headcount limits) will be obliged to implement channels for reporting irregularities anonymously.</p>
Has the national implementation law extended any areas of the Directive?	<p>There is still no draft version of the new law.</p>
Does national law allow for anonymous whistleblowing reports?	<p>Yes, taking into account article 24 of the Data Protection Act, but it is only required to guarantee the adequate operation of the internal reporting channels procedure. Nothing else is provided in this law.</p>
What measures have been taken in national law to protect the whistleblower?	<p>Article 24.3 of the Data Protection Act provides that it is mandatory to preserve the identity and confidentiality of the whistleblower and the info provided to this regard.</p>
What are the consequences for an organisation if a person suffers retaliation as a result of a whistleblowing complaint?	<p>In absence of a proposed bill, we cannot provide any further information on this matter (though sanctions for breach of Data Protection Rights may apply).</p>
What arrangements have been put into place for external reporting, i.e. who will be the competent authority?	<p>There is still no draft version of the new law.</p>



Summary	<p>Attempts to introduce legislation protecting whistleblowers have been so far inconclusive in Switzerland.</p> <p>Following a dismissal of the draft law by the Swiss National Council (Nationalrat) on 5 March 2020, Switzerland remains without specific legislation with regards to the protection of whistleblowers who currently have no effective statutory protection.</p> <p>Whistleblowing cases and issues need therefore to be addressed by employers individually by means of internal policies. In case such policies are not in place, the general principles of law and employment law (right to freedom of expression / protection of personality / duty of care etc.) will apply.</p>
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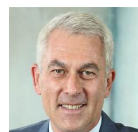
Summary	<p>The new Whistleblower Protection Directive will not apply in the United Kingdom, although some changes of a similar nature are currently under consideration in Parliament.</p> <p>Whistleblower protection in the United Kingdom became law in 1998 through the Public Interest Disclosure Act 1998. Workers and employees have specific protections incorporated into employment legislation.</p> <p>Whistleblowers will be protected if they make a ‘disclosure of information’ which the worker reasonably believes is in the public interest. The worker must have a reasonable belief that their disclosure of information shows an actual or potential criminal offence, breach of a legal obligation (this covers obligations in contracts, the law and regulatory rules), miscarriage of justice, health and safety danger, damage to the environment, or attempts to conceal any of these things. The disclosure needs to be made to the appropriate person(s) depending on the nature of the disclosure. This might be the whistleblower’s employer, the person responsible for the breach, the regulator, a legal adviser or a government minister.</p> <p>If a worker has blown the whistle, they benefit from the following protections:</p> <ul style="list-style-type: none"><li>• Protection from detriment (such as failure to promote, disciplinary action, being marginalised or suffering retaliation including after employment) on the ground that they have made a protected disclosure; and</li><li>• Protection from a dismissal carried out because of the disclosure.</li></ul> <p>These rights apply from day one of work/employment and there is no cap on the compensation available in respect of the above protections. Normally whistleblowing claims will be brought against the employer, but in certain cases individual employees/managers can also be liable.</p> <p>There is a Whistleblowing Commission which provides best practice guidance for whistleblowing policies, training, and investigations. Generally there are no statutory requirements setting out what policies or reporting procedures need to be in place, but regulated financial services firms are subject to specific regulatory provisions regarding whistleblowing, and listed companies will be subject to specific requirements based on the recommendations of the UK Corporate Governance Code.</p> <p>The Whistleblowing Commission recommends that employers have clear whistleblowing policies and publishes them to staff, but again, this is not a legal requirement. However, having such policies can be useful because they demonstrate an employer’s commitment to listen to workers’ concerns and that information being brought to the attention of management is encouraged. This can help to dispel inferences that disclosures are discouraged, and can help to demonstrate that marginalising whistleblowers will not be tolerated.</p> <p>In 2019, Parliament called upon the government to review whistleblower protection to consider applying it to a wider category of people, particularly job applicants. In 2020 the Public Interest Disclosure (Protection) Bill was introduced for consideration in Parliament. It proposes similar protections to the Whistleblower Protection Directive in that it would codify the how protected disclosures should be handled, and also proposes criminal sanctions for individuals harming whistleblowers or failing to act on disclosures.</p>
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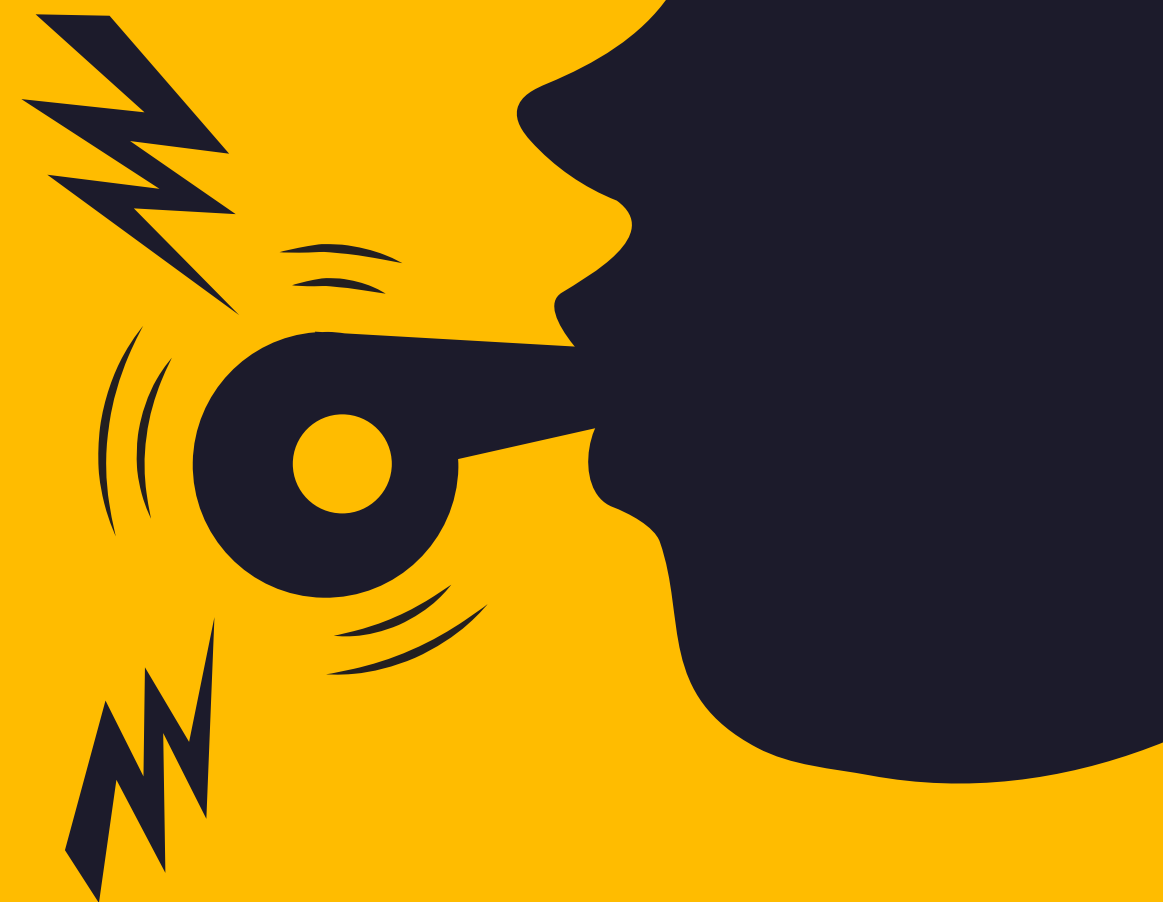
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