



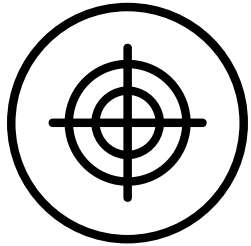
EU Whistleblower Directive
Key Requirements for Legal
Entities in the Private Sector

April 2022



EU Whistleblower Directive

Purpose



Purpose: The purpose of this Directive is to enhance the enforcement of Union law and policies in specific areas by laying down common **minimum** standards providing for a high level of protection of persons reporting breaches of Union law

potential whistleblowers are often discouraged from reporting their concerns or suspicions for **fear of retaliation**

Paragraph 1

it is necessary to enhance enforcement by introducing **effective, confidential and secure** reporting channels and by ensuring that whistleblowers are **protected effectively** against retaliation

Paragraph 3

Member states could decide to extend the application of national provisions to their areas with a view to ensuring that there is a **comprehensive and coherent whistleblower protection framework** at national level

Paragraph 5

protection should be granted to the broadest possible range of categories of persons, who, irrespective of whether they Union citizens or third-country nationals, by virtue of their work-related activities, irrespective of the nature of those activities and of whether they are paid or not, have privileged access to information on breaches that it would be in the public interest to report and who may suffer retaliation if they report them

Paragraph 37

the notion of breach also includes **abusive practices** ... namely acts or omissions which do not appear to be unlawful in formal terms but **defeat the object or the purpose of the law**

Paragraph 42

Scope of companies impacted by EU Whistleblowing Directive



*Note: The threshold of 50 workers does not apply for legal entities already falling in the scope of certain Union acts (most notably those governing financial services)

EU Whistleblower Directive

Key Requirements for Legal Entities in the Private Sector



1. Obligation to establish internal reporting channels

- Legal entities in the private sector **with 50 or more workers** must establish channels and procedures for internal reporting and follow-up
- Such channels and procedures shall **enable** the entity's workers and other persons who are in contact with the entity **to report information on breaches**
- Reporting channels may be operated internally or provided externally



2. Procedures for internal reporting and follow-up

- Channels are designed, established and operated in a **secure** manner that **ensures the confidentiality** of the identity of the reporting person
- Channels enable reporting in writing or orally (by telephone and upon request by means of a physical meeting), or both
- **Receipt of report** is acknowledged to the reporting person **within seven days**
- Requirement for diligent follow-up by the impartial person or department designated to maintain communication, ask for additional information and provide feedback to the reporting person
- Provide **feedback** within a reasonable timeframe, **not to exceed three months** from acknowledgement of receipt
- Provision of clear and easily accessible information regarding procedures to report externally to competent authorities

EU Whistleblower Directive

Key Requirements for Legal Entities in the Private Sector



3. Duty of Confidentiality

- The identity of the reporting person is **not to be disclosed** to anyone beyond the authorized staff members competent to receive or follow-up on reports, **without the explicit consent** of the reporting person
- *Confidentiality ≠ Anonymity*



4. Processing of personal data

- Processing of personal data must be done in accordance with the **General Data Protection Regulation (GDPR)**
- Personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay
- *The EU Whistleblower Directive specifically states that the effective protection of the confidentiality of the identity of reporting persons is necessary for the protection of the rights and freedoms of others. Accordingly, Member States should ensure that the EU Whistleblower Directive is effective by restricting certain data protection rights granted in EU Directive 2016/679 so that it cannot be used to attempt to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempt to find out the identify of the reporting person(s) [par. 84]*

EU Whistleblower Directive

Key Requirements for Legal Entities in the Private Sector



5. Record keeping of reports

- Entities must **keep records** of every report received but such records **shall be stored no longer than is necessary** in order to comply with the Directive
- Where oral reporting is documented, the reporting person must be offered the opportunity to check, rectify and agree any transcript or minutes taken
- When a meeting takes place, the entity may document the meeting through a recording or by taking accurate minutes which shall be offered to the reporting person for review, rectification and agreement



6. Prohibition of retaliation

- **All forms of retaliation** (direct & indirect) **are prohibited** including the threat of retaliation and any attempt at retaliation
- Examples of retaliation prohibited include (but are not limited to): suspension, lay-off, demotion, negative performance assessment, imposition of penalties, early termination of a temporary employment contract, cancellation of license or permit, psychiatric or medical referrals, etc.
- *With respect to proceedings before a court or other authority relating to a detriment suffered by the reporting person, it shall be for the person who has taken the detrimental measure to prove that the measure was based on duly justified grounds*

EU Whistleblower Directive

Hinder or attempt to hinder reporting

Breach the duty of maintaining the confidentiality of the identity of reporting persons,
(as referred to in Article 16)



Retaliate against reporting persons and other associated persons or legal entities
(as defined in Article 4)

Bring vexatious proceedings against reporting persons and other associated persons or legal entities
(as defined in Article 4)

Why Deloitte?

Support & Services



Implement proven whistleblower systems

- As your partner, we can implement proven third-party disclosure systems and ensure success
- We can also offer a proprietary end-to-end highly customizable whistleblowing solution (Deloitte Conduct Watch) that is compliant with both EU General Data Protection Regulation (GDPR) and Swiss Federal Act on Data Protection (FDAP)



Ombudsman as a Service

As an independent third party with investigations experience, Deloitte can

- Serve as the competent party for the receiving of initial reports
- Ensure required follow-up (e.g., by requesting additional information, providing feedback, etc.) is properly completed
- Perform independent investigations of severe cases



Assess and draft (or update) current whistleblowing policies

- Check for compliance against the EU Whistleblower Directive (if applicable)
- Check for compliance with EU GDPR and the Swiss FADP (as applicable)
- Support with the internal communication to employees and third-parties

Key Differentiators



#1 Swiss Forensics Practice

The Deloitte Switzerland Forensics team is number one in the Swiss market and the 3rd largest Forensic team within the global Deloitte network. Our team consists of around 80 individuals in Switzerland with access to a global network of over 4'000 expert professionals who combine forensic accounting and investigative skills with leading edge technology and advanced data analytics techniques to offer innovative solutions for your legal, regulatory and financial crime issues.



Deep experience in technical implementation

We exploit state of the art analytics capability and bring deep technical experience. We offer market leading scalable technology solutions that can be deployed in our FINMA compliant (circular 2008/7) data center, from behind client firewalls or in a secure cloud which is monitored and run by us



Leading Global Forensic Practice

Deloitte is named as a global leader in the Forensic Investigations Advisory space based on depth, breadth and integration of capabilities by Kennedy Consulting Research and Advisory



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