



**ACCOUNTANCY
EUROPE.**

EU DIRECTIVE ON WHISTLEBLOWER PROTECTION

Factsheet

FACTS.

**BUSINESS INTEGRITY
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HIGHLIGHTS

The EU has set new rules to guarantee high-level protection to whistleblowers across a wide range of organisations and sectors. Because of this broad scope, accountants, auditors and advisors in the private and public sector should be aware of the minimum common standards for protection that this Whistleblowers' Directive sets. This factsheet provides an overview of the Directive's key aspects that will start to apply in 2021:

- Which entities are affected by the new rules?
- What is the Directive's scope?
- Who will be protected?
- Which channels can be used to report a violation of the EU law?

INTRODUCTION

On 7 October 2019, the European Union (EU) adopted the Directive on the protection of persons reporting on breaches of EU law (the Whistleblowers' Directive). Member states will have two years to transpose the new rules into their national law, starting from the date that the legislation gets published in the Official Journal.

The Whistleblowers' Directive sets minimum common standards for protecting whistleblowers across the EU and aims to introduce effective, confidential and secure reporting channels. The new law prohibits reprisals and introduces safeguards against whistleblowers being suspended, demoted, intimidated or other forms of retaliation.

Given the wide scope of entities, areas and persons that the Directive covers, accountants, auditors and advisors in the private and public sector should be aware of the minimum common standards set for protecting whistleblowers.

WHICH ENTITIES ARE AFFECTED BY THE NEW RULES?

When it comes to protecting whistleblowers against retaliation, the Directive applies to private companies and public institutions across all industry sectors. Additionally, the following types of entities will be required to set up internal channels and procedures for whistleblower reporting:

- Legal entities in the private sector that fulfil any of the following criteria:
 - with at least 50 employees
 - operating in the area of financial services, products and markets
 - vulnerable to money laundering or terrorist financing
- All legal entities in the public sector, but exemptions are possible for municipalities with less than 10 000 inhabitants, or less than 50 employees.

WHAT IS THE DIRECTIVE'S SCOPE?

Whistleblowers are protected when they report breaches of the EU law in a broad range of areas e.g. financial services, preventing money laundering and terrorist financing, tax fraud, public procurement, product and transport safety, public health, environmental, consumer and data protection, EU competition law.

This Directive does not affect protecting classified information or medical professional privilege, not the secrecy of judicial deliberations and rules on criminal procedure. The Directive's scope also excludes reporting breaches related to defence or security aspects of procurement.

WHO WILL BE PROTECTED?

The Directive grants protection to whistleblowers who report or disclose information about EU law breaches that they came across within the context of their work-related activities. Protection from retaliation covers workers in the public and private sector. This includes civil servants, employees, self-employed, shareholders, management, administrative or supervisory body, including non-executive members, volunteers, paid or unpaid trainees, contractors, subcontractors and suppliers.

The Directive also applies to

- whistleblowers whose employment has ended
- whistleblowers who acquired information about the breach in the processes of being recruited.
- people who assist whistleblowers, such as facilitators, colleagues, relatives and investigative journalists

In case of deliberate malicious or misleading information whistleblowers will not be protected. However, if the reporting person made an inaccurate report in honest error, protection will be maintained.

As regards anonymous reporting, it is up to Member States to decide whether private or public entities and competent authorities should accept and follow-up on anonymous reports.

WHICH REPORTING CHANNELS CAN BE USED?

The Directive sets out three possible reporting channels - internal, external and public disclosure. It encourages whistleblowers to first use internal reporting channels and report to their employer. But, it adds that whistleblowers can choose the most appropriate reporting channel (i.e. whether to first report internally to the legal entity concerned or directly to competent national authorities). Public disclosure including to the media may only be used subject to conditions (see at 3 below).

1 - INTERNAL REPORTING

Legal entities in the private and in the public sector are required to establish internal channels and procedures for reporting and following up on reports. Reporting channels may be operated internally, by a designated person or department, or outsourced to a third party, if the third party offers appropriate guarantees of respect for independence, confidentiality, data protection and secrecy. Third parties authorised to receive reports on behalf of private and public entities can be external reporting platform providers, external counsel, auditors, trade union representatives or workers' representatives.

The procedures for internal whistleblowing and follow-up should include:

- Secure channels for receiving the reports to ensure the confidentiality of the whistleblower's identity and any third party mentioned in the report. Reporting channels should allow for written and/or oral reports e.g. through telephone lines. Such channels should also allow for a physical meeting within a reasonable time frame, if requested by the whistle-blower
- Acknowledgment of the report's receipt to the whistle-blower within seven days
- Designation of an impartial person or department for following up on the reports, and maintaining communication, asking for further information and providing feedback to the whistle-blower
- Diligent follow-up of the report by the designated person or department
- Diligent follow-up of anonymous reporting where provided for in national law
- A reasonable timeframe to provide feedback to the whistle-blower about the report's follow up, not exceeding three months from acknowledging its receipt
- Clear and easily accessible information regarding the conditions and procedures for reporting externally to competent authorities

In case internal channels do not exist or do not function properly, the whistle-blower (reporting externally) shall enjoy protection against retaliation.

2 - EXTERNAL REPORTING

Whistleblowers can report breaches using external channels, either after having used the internal channel and assessed there was no progress (3 months deadline) or by directly reporting to external competent authorities. Competent authorities must establish independent and autonomous external reporting channels to receive, give feedback or follow up on the reports.

3 - PUBLIC REPORTING

Whistleblowers will be protected if they disclose information in the public domain if one of the following conditions is fulfilled: (a) there was no appropriate action taken after internal and / or external reporting, (b) the breach constitutes an imminent or clear danger for the public interest, (c) in case of external reporting, there is a risk of retaliation or a low prospect of the breach being effectively addressed.



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