



SOCIONEWS



LAW

PROTECTION OF WHISTLEBLOWERS

The Law of 16 May 2023 transposing 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 came into force on 21 May 2023.

The purpose of the law is to protect the reporting person from retaliation by an employer or other natural or legal person exercising some power of coercion in relation to the activity of the "whistleblower".

1. WHICH BREACHES CAN BE REPORTED?

Breaches of European law, but also of national law, can be reported.

2. WHO CAN REPORT A BREACH?

Protection is given to as many categories of people as possible. This includes all persons working in the private and public sectors, independent service providers, freelancers, contractors and subcontractors.

Shareholders and members of the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees fall within the scope of the law.

In addition, the law also applies to anyone working under the supervision and direction of contractors, subcontractors and suppliers.

Finally, reporting persons are also protected in cases where their employment relationship has ended or the employment relationship has not yet begun, for example where information about breaches was obtained during the recruitment process or other pre-contractual negotiations.



3. INTERNAL REPORTING

Reporting persons are encouraged to give preference to reporting through internal reporting channels before reporting through external reporting channels when it is possible to effectively remedy the breach internally and they believe that there is no risk of retaliation.

Legal entities under private law with more than 50 employees and legal entities under public law, i.e. state administrations, public institutions and municipal administrations with more than 10,000 inhabitants are obliged to establish an internal reporting channel.

The reporting channel may be managed internally by a person or department designated for this purpose or provided externally by a third party. The legal entities should make available appropriate information on the use of internal reporting channels, as well as clear and easily accessible information on external reporting procedures. The reporting channels must allow for written or oral reporting or both in one of the three administrative languages of Luxembourg.

Under the new law, the internal reporting procedure provides for:

- a securely managed alert channel which guarantees the confidentiality of the identity of the reporting person and of any third party mentioned in the report;

- acknowledgment of receipt of the report to the reporting person within seven days of that receipt;
- the designation of an impartial person or department competent for following-up on the reports and who will maintain communication with the reporting person and, where necessary, request further information and provide feedback to the reporting person;
- diligent follow-up by the designated person or department for the following-up of reports where the author is identified or identifiable;
- a reasonable period of time to provide feedback, not exceeding three months from the acknowledgement of receipt of the report or, if no acknowledgement was sent to the reporting person, three months from the expiry of the seven-day period after the report was made.

It should be remembered that the reporting channels must allow for written or oral reports or both in one of the three administrative languages. It is possible to report orally by telephone or through other voice messaging systems and, if requested by the reporting person, by means of a physical meeting within a reasonable timeframe.

4. ESTABLISHMENT OF A REPORTING OFFICE FOR REPORTING PERSONS

The mission of the office is to inform and assist the reporting person, in particular by clarifying the applicable procedures to be followed when making a report.

The Office is also responsible for raising awareness of existing legislation on the protection of persons who report breaches

and for drawing up recommendations on any question relating to the application of the legislation.

In addition, the Office may notify the competent authorities when it becomes aware of a breach of the obligation to establish internal reporting channels.

5. EXTERNAL REPORTING

When the wants to report breaches through the external reporting channel, it is proposed to use the existing authorities in a wide range of areas, such as the inspection staff of the Labour Inspectorate (ITM) when it comes to reports of breaches concerning labour legislation.

When the reporting person wants to report breaches using the external reporting channel, it is suggested that the authorities in place in a large number of areas are called upon, such as the Inspectorate of Labour and Mines (Inspection du travail et des mines – ITM) when it comes to reporting breaches relating to labour legislation.

6. PUBLIC DISCLOSURE

A reporting person may make a public disclosure under the protection provided by law if he or she has first reported internally and externally or directly externally a breach for which no appropriate action has been taken, and where he or she has reasonable grounds to believe that:

- the breach may constitute an imminent or manifest danger to the public interest; or
- there is a risk of retaliation or there is a low prospect of the breach being effectively addressed in the case of external reporting.

7. PROTECTIVE MEASURES

The law provides for a list of prohibited retaliation against a reporting person, which is not exhaustive. Thus, not only unilateral measures, but also contractual stipulations sanctioning

retaliation under the cover of an agreement or tending to preventively limit the protection of the law are sanctioned by the law as null and void.

8. SANCTION

An administrative fine may be imposed by the competent authorities or the reporting office on natural and legal persons who:

- hinder or attempt to hinder reporting;
- refuse to provide information deemed necessary by the competent authorities, or provide incomplete or false information;
- breach the duty of maintaining the confidentiality of the identity of reporting persons;
- refuse to remedy the established breach;
- fail to establish channels and procedures for internal reporting and follow-up.

The fine can range from EUR 1,500 to EUR 250,000. The maximum fine may be doubled in the event of a repeat offence within 5 years of the last sanction becoming final.

In addition, a fine of EUR 1,250 to EUR 25,000 may punish persons who retaliate or initiate abusive proceedings against the reporting persons.

The reporting person who knowingly reports or publicly discloses false information may be sentenced to imprisonment for a period of eight days to three months and a fine of 1,500 euros to 50,000 euros. The reporting person will be held civilly liable and the entity that has suffered damage may seek compensation for the loss suffered before the competent court.