

Protection of persons reporting on breaches of Union law

2018/0106(COD) - 26/11/2019 - Final act

PURPOSE: to strengthen the protection of persons reporting on breaches of Union law (whistleblowers).

LEGISLATIVE ACT: Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law.

CONTENT: the purpose of the Directive is to strengthen the application of Union law and policies in specific areas by establishing common minimum standards ensuring a high level of protection for persons reporting violations of Union law. Whistleblowers are important for the proper functioning of a democratic system based on the rule of law.

Scope of application

The Directive ensures a high level of protection for whistleblowers in a wide range of areas such as public procurement, financial services, prevention of money laundering, public health, food safety and violations affecting the Union's financial interests. This Directive shall not affect the responsibility of Member States to ensure national security or their power to protect their essential security interests.

Protection of reporting persons under the new rules

This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context. It shall also apply to reporting persons also where they report or disclose information acquired in a work-based relationship which has since ended. The measures for the protection of reporting persons shall also apply to facilitators and to third persons connected with the reporting persons and who may suffer retaliation in a work-related context, such as colleagues or relatives of the reporting person.

Creation of secure internal and external reporting channels

The new rules require private sector legal entities with more than 50 employees and public sector entities to establish channels and procedures for internal reporting. Reporting channels may be managed internally by a person or department designated for this purpose or provided externally by a third party. Member States may exempt from this obligation municipalities with less than 10 000 inhabitants or less than 50 workers.

Reporting persons shall report information on breaches using the channels and procedures, after having first reported through internal reporting channels, or by directly reporting through external reporting channels.

Member States shall encourage reporting through internal reporting channels before reporting through external reporting channels, where the breach can be addressed effectively internally and where the reporting person considers that there is no risk of retaliation.

Reporting obligations and feedback

Authorities and companies shall ensure prompt follow-up of alerts and follow up on whistleblower reports within 3 months from the expiry of the 7-day period following the alert (this period may, in duly justified cases, be extended to 6 months for external channels). The competent authorities shall communicate to the reporting person the final outcome of investigations triggered by the report.

Public disclosures

The Directive sets out the conditions to be met for a person to be protected by the new rules in the event that he or she discloses information.

A person who publicly discloses information on breaches shall be protected if he or she first made a report through internal and external channels and had reasonable grounds to believe that the offence may represent an imminent or manifest danger to the public interest, such as an emergency situation or a risk of irreversible damage.

Member States shall ensure that the identity of the informant is not disclosed without the explicit consent of the informant to any person other than staff members authorised to receive and/or follow up on reports.

Support and protection measures

The Directive prohibits any form of retaliation, including threats and attempted retaliation, direct or indirect, in particular in the form of dismissal, demotion or refusal of promotion. It requires Member States to take a series of measures to ensure that informants are protected against reprisals.

Member States shall provide whistleblowers with comprehensive and independent information on available procedures, free advice and legal assistance during the procedure. During the latter, whistleblowers shall also be able to benefit from financial and psychological support.

The rights and remedies provided for in the Directive may not be waived or limited by any agreement or policy, form of employment or working conditions, including an arbitration agreement.

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