



**Baker
McKenzie.**

Whistleblower Directive Member State Implementation - [COUNTRY]

Privileged & Confidential





Contents

[Country]	1
1. Implementation	1
1.1 Current status of Directive	1
2. Scope of the Directive	1
2.1 Material Scope	1
2.2 Personal Scope.....	2
3. Requirements for Internal Procedures	2
3.1 Procedural Requirements	2
4. Protection of Whistleblowers	6
4.1 Confidentiality and Anonymity	6
4.2 Anti-retaliation and other forms of support	7
5. Data privacy issues	9
5.1 Record keeping and data privacy	9
6. Liability Issues	10
6.1 Liability and financial incentives	10

In this table:

- the 'Directive' or the '**WBD**' means 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
- 'local law' means the local law implementing the Directive in a Member State, and any other local law which provides protection for whistleblowers or places requirements of private companies to operate whistleblowing systems or procedures
- the 'Whistleblower' means the 'reporting person' under the Directive

1. Implementation

1.1 Current status of Directive [•]

(a) Please provide a hyperlink to the local law which implements the Directive in your country (with link to English translation if possible). [•]

(b) What date does the local law come into force? [•]

(c) Is there any 'grace period' in which a company has to comply with the local law? [•]

2. Scope of the Directive

2.1 Material Scope [•]

(a) What types of breaches of law reported by Whistleblowers are protected under local law? [•]

(b) Does this also cover breaches of EU law? [•]

2.2 Personal Scope [•]

- (a) Does local law only apply to the reporting of breaches that a Whistleblower becomes aware of in a work-related context (i.e., the Whistleblower has to have a connection with the workplace)? [•]
- (b) Please describe the categories of people who may make reports / are protected. [•]
- (c) Who else benefits from protection from retaliation apart from the person making the report? [•]

3. Requirements for Internal Procedures**3.1 Procedural Requirements [•]**

- (a) Does local law require employers to have mandatory whistleblowing procedures? Please describe them. [•]
- (b) Does local law require different types of reporting channels including the possibility of a physical meeting? [•]
- (c) Does local law place any restrictions on use of certain reporting channels? [•]

3. Requirements for Internal Procedures

3.1	Procedural Requirements	[•]
(d)	Does local law require a prior approval of the internal whistleblowing procedure by the data protection authority or any other authority?	[•]
(e)	Does local law require any information/consultation/co-determination with employee representatives and/or unions prior to implementing the internal whistleblowing procedure?	[•]
(f)	Prior to implementation of the Directive, were internal whistleblowing procedures common practice in your jurisdiction (particularly in multinational companies)?	[•]
(g)	Does local law require that the internal whistleblowing procedure be available in local language?	[•]
(h)	Does local law have any requirements/limitations that specifically apply with regard to the use of external service providers (third parties) to undertake the investigation and/or to assist with the same?	[•]
(i)	Does local law require the employer to implement a particular	[•]

3. Requirements for Internal Procedures

3.1	Procedural Requirements	[•]
	<p>type or form policy document in relation to whistleblowing procedures?</p> <p>If yes, please provide details of what the policy should include, and if there are rules or guidance on how it should be issued to employees and other potential reporting persons.</p> <p>Must the policy be called a "whistleblowing policy" or can it be contained, for instance, within the group's Code of Conduct?</p>	
	(j) Does local law establish any sanctions for:	[•]
	(i) not implementing an internal whistleblowing policy	[•]
	(ii) interfering with an investigation or a report	[•]
	(iii) failing to investigate a report?	[•]
	(k) Does local law require companies with fewer than 50 employees to establish internal reporting systems?	[•]

3. Requirements for Internal Procedures

3.1	Procedural Requirements	[●]
(l)	Does local law establish set time-limits to confirm receipt of disclosures by Whistleblowers and any prescribed format for confirmation of receipt?	[●]
(m)	Does local law set time-limits for providing feedback to Whistleblowers)?	[●]
(n)	When providing feedback to Whistleblowers, how much detail is required and is there a prescribed format for the feedback?	[●]
(o)	Does each local entity have to have its own internal reporting channels or can they rely on a group reporting channel?	[●]
(p)	Where it may be permissible to use a group reporting channel in some circumstances, what conditions apply?	[●]
(q)	Where it is not permissible to use a group reporting channel, how are multi-nationals typically addressing this? For instance: can a person be appointed to receive local reports, but this report then be passed to the group compliance function for investigation?	[●]

3. Requirements for Internal Procedures

3.1 Procedural Requirements [•]

- (r) The procedures for internal reporting channels must, according to the Directive, provide clear and easily accessible information regarding the procedures for reporting externally to competent Authorities, or relevant institutions, bodies etc. of the EU. Has your Member State published or provided a full list of competent Authorities in your Member State to whom external reports can be made? [•]

4. Protection of Whistleblowers

4.1 Confidentiality and Anonymity [•]

- (a) Are there restrictions on disclosing the identity of Whistleblowers? [•]
- (b) If the answer is yes, how does this impact on the ability to investigate disclosures (by the employer and any third party provider, e.g., Safecall)? [•]
- (c) Does local law allow anonymous reporting? [•]

4. Protection of Whistleblowers

4.1 Confidentiality and Anonymity [•]

(d) If so, is it advisable to limit use of the whistleblowing system to anonymous reporting only in your jurisdiction? [•]

(e) How are employers expected to handle third party reports? [•]

(f) Does local law give any rights to the "accused" (e.g., to be informed if he/she is being investigated, or to have both the investigation and his/her identity be kept confidential beyond those directly involved in the investigation, or anything else)? [•]

4.2 Anti-retaliation and other forms of support [•]

(a) Are there any forms of retaliation that are expressly prohibited under local law? [•]

(b) Does local law provide for measures to prohibit any form of retaliation against Whistleblowers and other parties? [•]

(c) What is the market practice in relation to anti-retaliation measures? For example: [•]

4.2	Anti-retaliation and other forms of support	[•]
	(i) is career progression and compensation decision-making tracked?	[•]
	(ii) do Whistleblowers receive support via EAP?	[•]
	(iii) do employers conduct anonymous surveys regarding Whistleblowers' experiences with the whistleblowing system and procedure?	[•]
	(d) What sanctions apply for companies who violate Whistleblowers' protection or the duty to keep their identity confidential?	[•]
	(e) Are there sanctions or any other liability for individuals (i.e., directors, or officers of the company, or those individuals who have retaliated or failed to keep the identity confidential)?	[•]
	(f) What support measures are available to Whistleblowers in your jurisdiction (see Article 20)? Please cover: information; financial support; psychological support.	[•]

4.2 Anti-retaliation and other forms of support [•]

(g) Do Whistleblowers enjoy special protection from civil claims (e.g., from breach of confidentiality claims)? Please cover any restrictions on use of NDAs. [•]

(h) Does local law provide for sanctions against Whistleblowers who make false reports? [•]

5. Data privacy issues

5.1 Record keeping and data privacy [•]

(a) Is there any specific obligation regarding record keeping of whistleblowing reports and related investigation documentation including any prescribed retention period? [•]

(b) Do records have to be kept in a prescribed format? Note the opportunity for Whistleblowers to check transcripts. [•]

(c) Should companies carry out a data protection impact assessment prior to rolling out a whistleblowing system or procedure? [•]

6. Liability Issues

6.1 Liability and financial incentives [•]

- | | | |
|-------|---|-----|
| (a) | Does having an internal whistleblowing system mitigate or eliminate the potential liability of the company and/or its executives and directors? | [•] |
| <hr/> | | |
| (b) | Are there arrangements in place whereby Whistleblowers are rewarded financially for blowing the whistle? | [•] |
-

Baker McKenzie.

Baker & McKenzie LLP is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2021 Baker & McKenzie LLP

bakermckenzie.com