



New European Directive “Whistleblowing”

On 26th November 2019, the new Directive (EU) 2019/1937 of the European Parliament and of the Council, dated October 23, 2019, was published in the Official Journal of the European Union, on **the protection of individuals reporting infringements of the Union law**.

This Directive officially entered into force last 17th December 2019, leaving the Member States a period of 2 years to transpose the Directive in their respective national regulations.

The Directive mainly addresses the following matters:

- It establishes the obligation for companies to enable in their respective organizations Whistleblowing Channels and defines the way in which the latter must be established.
- It requires Member States to adopt the necessary protection measures to guarantee the protection of people who decide to use these channels in good faith.

In relation to the first matter, this Directive provides that private sector legal entities that have **50 or more workers must implement an internal Whistleblowing Channels**. Even in some cases, after an adequate risk assessment and considering the nature of the activities of the entity in question, entities with less than 50 workers may also be required to establish such channels.

The aforementioned obligation shall apply to all legal entities in the public sector regardless of the number of workers, however leaving the possibility for Member States to exempt those with less than 50 workers.

Regarding the second issue, the Directive expressly provides for the **prohibition of any type of reprisal against people who wish to report through the aforementioned channels**. Specifically, retaliation is considered for the purposes of this Directive: suspension, dismissal or equivalent measures; degradation or denial of promotion; the change of job position, change of location of the work place, salary reduction or change of work schedule; denial of training; among others.

To guarantee the absence of reprisals, people who communicate information through the Whistleblowing Channels will not be considered to have infringed any restriction of disclosure of information, and they will not incur any responsibility, provided they had reasonable grounds to believe that the communication of such information was

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necessary to disclose an infringement under this Directive. Likewise, the complainants shall not incur responsibility for the acquisition or access to the information that is communicated, provided that said acquisition or access does not in itself constitute a crime.

With the objective of guaranteeing comprehensive coverage to the complainants, it is also planned to adopt support measures such as: complete and free information and advice on the procedures and resources available, protection against reprisals and rights of the affected person; the provision of financial assistance and psychological support within the framework of a judicial process; among others.

For all the above, it is concluded that the obligation to have a Whistleblowing Channels by companies is already a reality imposed by the European Union. Consequently, companies must enable these channels and carry out a management of the latter in accordance with the provisions of the new regulations.



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