

THE NEW WHISTLEBLOWER PROTECTION LAW

Rights and obligations
for effective, balanced
protection



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère de la Justice

The purpose of the Whistleblower Protection Law is to transpose 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 European Union law, into national law.



1. WHO IS THIS NEW LAW ON “WHISTLEBLOWER PROTECTION” AIMED AT?

It is for anyone in Luxembourg who, in the context of a current, past or future employment relationship, reports breaches of national or European law. This new legal framework is in addition to the procedures already in place for the financial sector, and to those set out as part of the fight against corruption, money laundering and the financing of terrorism.

2. WHAT ARE THE OBJECTIVES OF THE NEW LAW?

The key aim of the new law is to guarantee effective and balanced protection for whistleblowers through clearly defined rights and obligations, to reduce the current legal insecurities to which whistleblowers are exposed and, as a result, to help increase respect for the rule of law.



Why

3. WHAT REPORTING CHANNELS CAN BE ACCESSED BY WHISTLEBLOWERS?

Whistleblowers are encouraged to report internally before reporting externally. Internal reports must be made through an internal reporting channel that public and private-sector legal entities with at least 50 employees, and local authorities with 10,000 or more inhabitants, will have to set up. External reports may be made via one of the competent authorities listed in the law - in particular the Luxembourg Financial Services Authority (CSSF), the Luxembourg Insurance Commission (CAA), the Luxembourg Data Protection Commission (CNPD), the Luxembourg Inspectorate of Labour and Mines (ITM), etc. - which must provide the whistleblower with feedback within three to six months and guarantee the confidentiality of the whistleblower's identity at every level.

How



4. WHAT EXACTLY ARE THE REQUIREMENTS FOR SETTING UP INTERNAL CHANNELS?

For private-sector entities employing between 50 and 249 employees, the obligation to set up internal reporting channels comes into force on 17 December 2023. For private and public-sector entities with fewer than 50 employees and local authorities with fewer than 10,000 inhabitants, setting up an internal reporting channel is optional.

Reporting channels may be managed internally by a designated person or department or provided externally by a third party. They must be designed, set up and managed securely, guaranteeing the confidentiality of the whistleblower's identity and that of any third party mentioned in the report and preventing access to said channels by unauthorised personnel. ►

- ▶ The person responsible for receiving reports must be an impartial person or department competent to ensure follow-up (legal department, compliance department, human resources officer, data protection officer, specially designated person, etc.). Once a report has been made, an acknowledgement of receipt is sent to the whistleblower within seven days. The whistleblower must be guaranteed feedback within three months.

5. WHAT CONDITIONS MUST BE MET TO OBTAIN WHISTLEBLOWER STATUS?

Whistleblowers must fulfil two conditions in order to be recognised as “whistleblowers”:

- > the whistleblower must have reasonable grounds for believing that information on breaches is true at the time of reporting and;
- > the report has already been made internally or externally via the channels provided for this purpose or the information has been disclosed publicly.



6. WHAT CONDITIONS MUST BE MET FOR PUBLIC DISCLOSURE?

A breach may be reported by public disclosure when one of the following two conditions is met:

- > an internal and/or external external report has been made but no appropriate action has been taken within the specified timeframe;
- > the whistleblower has reasonable grounds for believing that the breach may represent an imminent or manifest danger to the public interest, or the whistleblower risks retaliation or believes that there is little chance that the breach will actually be remedied.





7. HOW ARE WHISTLEBLOWERS PROTECTED IN PRACTICE?

Firstly, if the report meets the conditions listed and if the information disclosed has been obtained legally, the whistleblower will not incur any liability. The law then protects whistleblowers against all forms of retaliation, including threats and attempted reprisals - for example dismissal or equivalent measures (demotion, transfer of duties, disciplinary measures, discrimination, etc.).



8. WHAT PENALTIES ARE SET OUT BY THE NEW LAW?

The law provides for sanctions against public and private-sector legal entities in the event of non-compliance with these new provisions, as well as against those responsible for reporting or publicly disclosing false information, who may be held liable. They will also be held liable if the means of obtaining the information constitutes a criminal offence.

In the event of failure to comply with the obligations arising from this law, public and private-sector entities may be subject to an administrative fine of between €1,500 and

€250,000 (doubled in the event of a repeat offence within 5 years).

Employers who retaliate or bring abusive proceedings against whistleblowers may be fined between €1,250 and €25,000.

Whistleblowers reporting or publicly disclosing false information may be subject to a prison sentence of between eight days and three months and a fine of between €1,500 and €50,000.

9. WHAT IS THE ROLE OF THE NEWLY-CREATED WHISTLEBLOWING OFFICE (“OFFICE DES SIGNALEMENTS”)?



Placed under the authority of the Ministry of Justice, the new Whistleblowing Office is responsible, amongst other things, for providing potential whistleblowers with information and guidance, raising public awareness of the provisions of this law, collaborating with other competent authorities, drawing up recommendations on all matters relating to this law and carrying out the tasks assigned to it in the external reporting procedure.

The Whistleblowing Office will set up a website which provides all relevant information on the use of internal reporting channels, receipt of external reports (email and postal addresses, telephone numbers, office contact details) and applicable procedures, such as the confidentiality of the report, the possibility of requesting additional information and the nature of the follow-up, as well as the deadline for providing feedback and the type of feedback. Additionally, the site will include information on conditions for whistleblower status, conditions under which whistleblowers may be held liable, as well as remedies and procedures for protection against retaliation.

+ INFORMATION

For further information, see the factsheet on the Ministry of Justice website.

WWW.MJ.GOUVERNEMENT.LU

