

## Whistleblower Protection

Protect your employees, your organization and partners



# Implications of the Law of 16 May 2023 on Whistleblower Protection



## Context

On 23 October 2019, the European Parliament and the Council issued the Directive (EU) 2019/1937 with the aim of protecting persons who report breaches of Union law. This was transposed into the Luxembourg national legislation by the Law of 16 May 2023 (“Whistleblower Law” or “the Law”).

Legal entities (private or public) as well as municipalities of a certain size (hereinafter all referred to as “obliged persons”) are required to comply with the Law.



## Who is protected?

**The Whistleblower:** a natural person who reports or publicly discloses information on violations of national and/or European law, obtained during (a) the hiring process or through pre-contractual agreements, (b) his/her current professional activities and (c) a former professional context.

**Other protected persons:** (a) facilitators who assist the whistle-blower, (b) third parties who are in contact with the Whistleblower and who may be subject to retaliation in a professional context (e.g., colleagues, representatives of trade unions) and (c) legal entities owned or operated by or connected to the Whistleblower or for whom they work, or with whom they are linked in a professional context.



## What are the key provisions impacting you?

### 01 Obligation to set up Internal Reporting Channels and adequate internal procedures

In case of absence of Internal Reporting Channels or adequate procedures to effectively and securely manage any reported violation (including appropriate follow-up measures), the obliged persons are exposed to:

- Substantial **administrative fine**
- Risk of use of **external reporting channels** or **public disclosure** by the Whistleblower

### 02 Prohibition of retaliation

The Law further underscores that **any retaliation** (e.g., demotion, termination of the employment contract, intimidation, or harassment) **towards the Whistleblower or any other protected person is prohibited**.

# Internal Reporting Channels

## At a glance

Specific requisites must be fulfilled by obliged persons. Are you ready?



### Are you required to implement Internal Reporting Channels?

	Obliged persons	Non-obliged persons
Private Sector	Private companies as of 50 employees	Private companies with less than 50 employees*
Public Sector	Administrations of municipalities with more than 10.000 inhabitants	All public companies, including any entity owned or controlled by such entities Administrations of municipalities with less than 10.000 inhabitants*

\* No obligation but possibility offered. Once opted, full adherence to the Law.  
According to Art. 6 (2) and 6 (6) of the Whistleblower Law, no specific employee thresholds required for certain supervised private companies of the financial sector.



### What are the consequences of non-compliance by obliged persons?

An administrative fine from your regulator ranging from EUR 1.500 to EUR 250.000 that can double in case of a repeated offense within five years. In the case there is a(n):

- Obstruction or attempted obstruction of a whistleblowing report
- Refusal to provide requested information or provision of incomplete/false information to the competent authority
- Infringement of the confidentiality of the Whistleblower’s identity
- Refusal to remedy the violation
- Non-implementation of Internal Reporting Channels and associated procedures

#### Possible Internal Reporting Channels and accepted languages

- Report in writing, orally (by phone or voice messaging system) or in person (at the request of the Whistleblower).
- Treatment in one of the three administrative languages or other languages accepted by the obliged persons.

#### Acknowledgment of receipt and feedback

- Functionality to send acknowledgment of receipt to the Whistleblower within 7 days.
- Feedback within reasonable period not exceeding 3 months from the acknowledgment of receipt of the report.

#### Clear and easily accessible information

- Accessibility of data, internal procedures and use of the Internal Reporting Channels by national and European competent authorities.

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#### Secure and confidentially managed channels

- Confidential treatment of the identity of the Whistleblower and of any third parties mentioned in the report.
- Prevention of access by unauthorized staff.



#### Designation of an impartial person/ department in charge



- Designation of a person, department or third party in charge of managing the Internal Reporting Channels and following-up the reports.



# A diagnosis fitting your needs



Our service offering helps you to tackle the challenges you are facing while meeting regulators’ expectations.

There are great challenges ahead, either during the establishment of your Internal Reporting Channels or thereafter. With Deloitte sequential approach, we can support your quest to improve your **Whistleblower framework** in accordance with the nature of your business.



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360° risk analysis of your Whistleblower framework and arrangements in place to identify and, if required remediate, any gaps.
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Amend or revamp your Whistleblower framework (risk-based approach, policies, procedures and processes).
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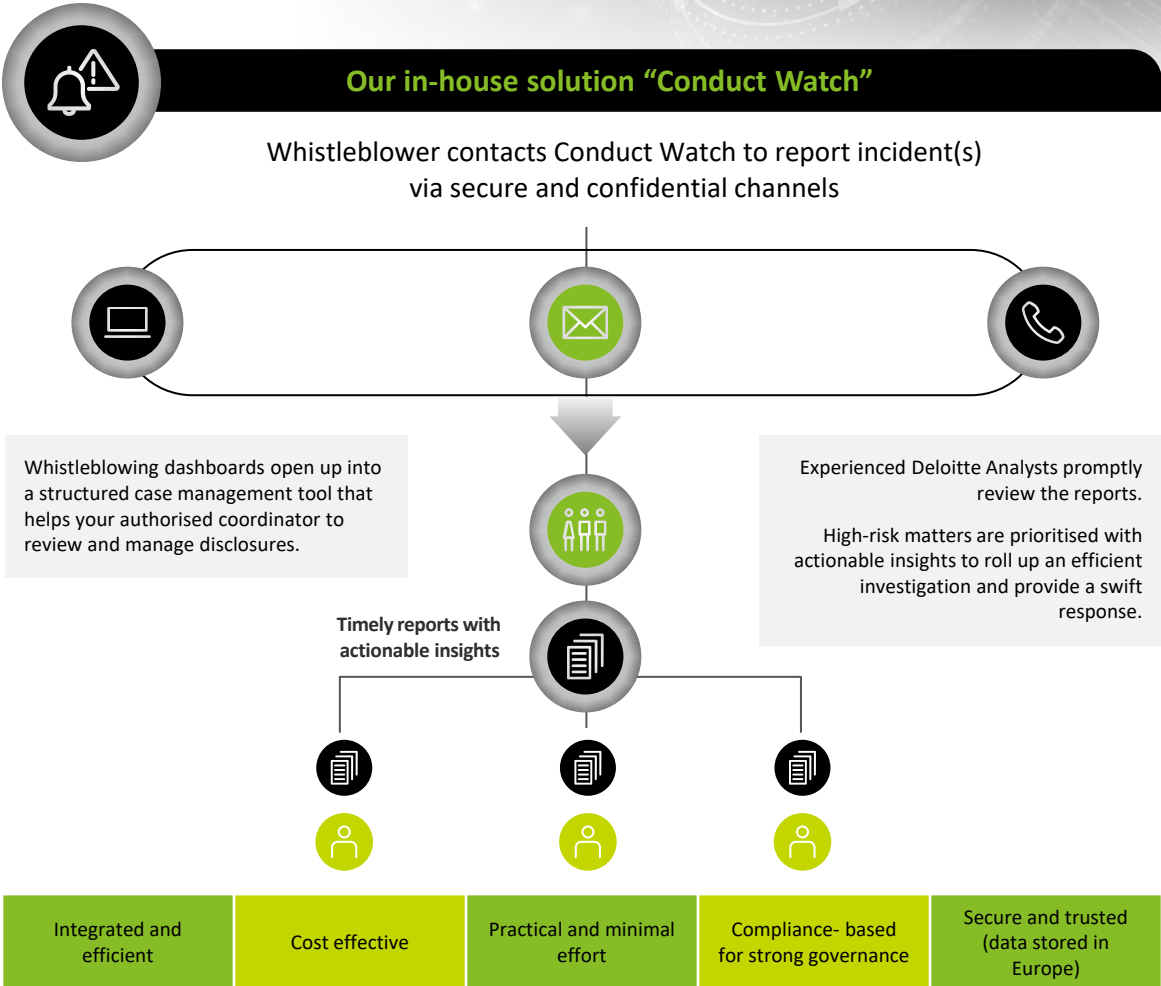
Remediation of affected area(s) and/or topic(s).
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Provision of detailed metrics follow-up and customization of alerts to monitor upcoming or existing cases, such as but not limited to:

  - Our in-house solution “Conduct Watch” suitable for large entities
  - Alternative external solutions suitable for small - and medium-sized entities.
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Identify training requirements, and draft training materials and agree on training schedule.
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Conduct a mock-up inspection of the Whistleblower arrangements in place to ensure readiness with a regulator inspection.



## Contact us

Do not miss this opportunity to stay ahead of the game. Get in touch with the Forensic & Financial Crime experts.

Whether high-level, à la carte or a deep dive, we customize our services to meet your needs and expectations in accordance with the Whistleblower Law and other applicable legal and regulatory requirements.



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