

RISK & COMPLIANCE

Platform Europe

www.riskcompliance.ro



**THE INTEGRITY
coordinator**

Disclaimer: The information provided is to the best of our knowledge, it is not legal advice



Introduction: Geert Vermeulen

- I help organizations to act in an ethical & compliant way
- Chief Compliance Officer Aon EMEA
- Global Head of Compliance DAMCO / part of Maersk
- 20 years in compliance/15 in ABC and whistleblowing
- Founder/CEO of ECMC
 - Teacher, trainer, speaker
 - Consultant
- Founder/CEO The Integrity Coordinator

- Former President Dutch Compliance Officers Association
- Founder Expert Group on Financial Economic Crime
- Member Expert Group on Culture & Behaviour and ESG
- Professional Advisory Committee Compliance Minor Hague University



2020 National Compliance Award



LuxLeaks

- Antoine Deltour and Raphaël Halet (PwC) leaked confidential information about tax deals of large corporations in Luxemburg to journalists in 2014
- Lots of commotion in the press
- Deltour and Halet prosecuted
 - At first instance: 12/9 months jail + € 1500 fine
 - Public commotion, appeal, suspended jail sentence
 - In the end acquitted
- Public opinion shifted / judges as well
- European Commission/OECD: BEPS
- 130 countries agreed on a minimum tax%





April 23 2018: Proposal European Commission EU Whistleblower Protection Directive

Referring to **LuxLeaks**, **Panama Papers**, **Cambridge Analytica**, first Vice-President of the Commission Frans Timmermans said:

*"Many recent scandals may never have come to light if insiders hadn't had the courage to speak out. But those who did took enormous risks. So if we better protect whistleblowers, we can better detect and prevent harm to the public interest such as fraud, corruption, corporate tax avoidance or damage to people's health and the environment. **There should be no punishment for doing the right thing.** In addition, today's proposals also protect those who act as sources for investigative journalists, helping to ensure that freedom of expression and freedom of the media are defended in Europe."*



April 23 2018: Proposal European Commission

Věra Jourová, Commissioner for Justice, Consumers and Gender Equality added:

*"In the globalised world where the temptation to maximise profit sometimes at the expense of the law is real. We need to support people who are ready to take the risk to uncover serious violations of EU law. **We owe it to the honest people of Europe.**"*



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EU Whistleblower Protection Directive

- Had to be implemented into national law by 17 December 2021
- Status update:
 - Entered into force in Denmark
 - European Commission started infringement procedure against 26 Member States
 - Laws adopted in Sweden, Cyprus, Malta, Portugal, Latvia, Lithuania, France
 - See: <https://www.whistleblowingmonitor.eu>
 - In each country implemented slightly different
- EU Directive already applies directly to public entities as of December 17 and ?



EU Whistleblower Protection Directive

- Applies to private organizations with > 250 employees as of December 17, 2021 (or when national law has entered into force)
- Applies to **all** organizations subject to financial/AML/TF legislation (and a few more) as of December 17, 2021 (or when national law has entered into force)
- Applies to private organizations with > 50 employees from December 17, 2023
- Applies to public organizations: now (but small municipalities may be exempted)



EU Whistleblower Protection Directive

- Prohibits retaliation against whistleblowers = primary goal
- Individuals who report wrongdoing encountered in a work-related context
- Broad definition of protected persons:
 - This can be (former) employees, interns, volunteers, (sub)contractors but also
 - (Employees of) suppliers, shareholders, board members, etc.
- Protected against dismissal, suspension, demotion, poor evaluation, etc.
- **Reversal burden of proof**
- Scope = violation of EU law
- But most Member States extend the scope; each a little different



EU Whistleblower Protection Directive

- Organizations to set up confidential & secured whistleblowing channels
- Reports submitted in writing, orally or both
 - In-person meeting upon request of the reporter
- Impartial/independent coordinator (for each legal entity):
 - Somebody or a department who receives the report and somebody or a department who coordinates the follow-up on the report; can be same person
- Organization needs to keep a register of the reports
- (IT department should not be able to access it/see who reports)



EU Whistleblower Protection Directive

- Separate procedure for each legal entity
 - Is this the end of the global whistleblowing procedure?
 - European Commission: You can have a local and a global/group procedure
 - Report can be sent to HQ if the reporter agrees with that
 - But it should normally be received and investigated locally/per legal entity
- Entities with 50-249 employees can share resources
- The Integrity Coordinator is part of an EU network of independent coordinators
- Interested in joining the network?



EU Whistleblower Protection Directive

- Confirmation receipt of the report within 7 days, feedback within 3 months
- No fine if you don't have a reporting procedure, but.....
- The reporter is no longer bound by confidentiality/ non-disclosure clause if:
 - No appropriate action is taken after making the report, or
 - there is an eminent danger to the public interest, e.g. an emergency or
 - (in case of external report) there is a low prospect that the breach will be addressed
- Reporter can always go directly to the authorities / external reporting channel
⇒ Make it attractive for them to report internally first
- If that doesn't/won't work, they can go public / to the (social) media
- National legislation may be slightly different



Anonymity

- The identity of the reporter must be kept confidential, unless the reporter agrees that their identity is disclosed
- No obligation to enable anonymous reports in the EU Directive
- However, it is offered as a suggestion to national governments



What to do now? 8 Steps

1. Think about how to organize the group/local reporting channels
2. The scope of the procedure(s), e.g. violation of applicable law/code of conduct
3. Identify the coordinator of the whistleblowing procedure: who is impartial?
4. Who can make a report? Where? Make it available on the external website?
5. Will you offer the possibility to make an anonymous report?
6. How to secure the channel/register? External platform? Telephone option?
7. Start (re)drafting the whistleblowing and investigation procedure
8. If necessary: start the discussion with the Works Council/unions

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National Compliance Award

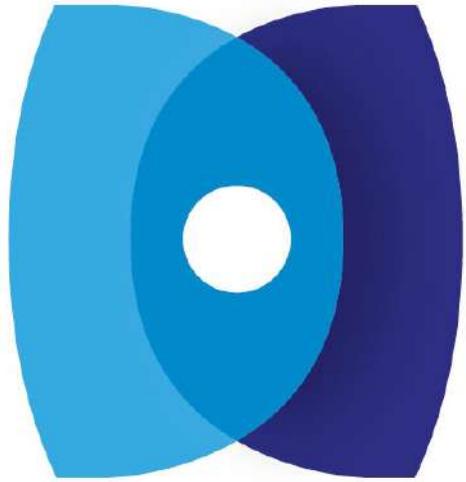
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Unleash the power of a good speak-up culture!

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Extra: The advantages of a good WB system



Association of Certified Fraud Examiners

- Average loss due to fraud: 5% of the revenue of a company
- > 50% of frauds are discovered through reporters
- Most of the reporters are
 - 1) Employees (50%)
 - 2) Clients (22%)
 - 3) Anonymous - we don't know who they are (15%)
 - 4) Suppliers (11%)
- You do the math!



George Washington University / Kyle Welch

Companies with more internal whistleblowing reports have:

- Fewer external whistleblower reports
- Fewer litigation costs (20,4 %)
- Fewer material lawsuits (6,9 %)
- Increased return on assets (2,8 %)



Higher ROA

Companies with higher hotline usage have ROA up to 2.8% higher than similar companies with lower hotline usage.

TOTAL SOCIETAL IMPACT

A NEW LENS FOR STRATEGY



BCG

THE BOSTON CONSULTING GROUP

Boston Consulting Group

Ethical companies
perform better financially in
the long term

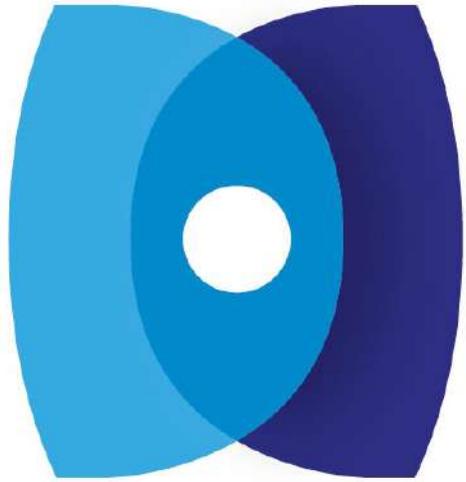
=> ESG investments



Benefits of a good speak-up system

- Identify and address problems early
- Fewer investigation & litigation costs
- Fewer fines
- Fewer management time spent on problems
- Better reputation, attract employees, suppliers, clients
- Transparency/organizational justice will increase the trust
- Stimulates the sharing of knowledge and ideas
- Better, more creative work environment

#Fraud
#Corona
#MeToo
#BlackLivesMatter
#ModernSlavery
#Health&Safety
#Corruption
#Environment
#MoneyLaundering
#Treating Customers Fairly
#Greatplacetowork
#Culture
#Trust
#Compliance
#Creativity
#Ethics



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Extra: Good Practices



Good Practices

- Encourage people to report internally instead of to authorities/ media so you get the first chance to solve the problem
- More reports means better business results
- How to accomplish this?



Why do people not report internally?

- They are afraid of the consequences (fired, reputational damage)
- They think nothing will happen/change
- They don't know how to report



Good practices 1/2

- Short, easy to understand, reporting procedure
 - Think of a good name, e.g. Ethics Helpline, Speak-up procedure
 - Avoid legal jargon (might be challenging)
- Make it possible to report anonymously
 - You can't retaliate against somebody who you don't know
- Make the procedure accessible to anybody
 - Include a link on your external website



Good practices 2/2

- Create trust; show what happens with the reports
 - Provide regular feedback to the reporter
 - Report statistics
 - Describe an anonymized case once in a while
 - Celebrate reporters / promote an open culture in respect of mistakes
 - Continue to repeat the message / make it personal / who is behind the channel?
- Protect (the identity of) reporters, conduct solid investigations
 - Really protect reporters, not just because the law says so / train the management
 - Ensure that investigations are conducted fairly, independently, solidly
 - Invite employees to report as soon as possible / at an early stage
 - “Organizational fairness”: treat similar cases equally



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