

The EU Whistleblowing Directive - What's not to like?

There's no doubt that the EU Whistleblowing Directive, once fully implemented across all EU Member States by the end of 2023, provides criteria which will assist organisations to install effective whistleblowing programmes and procedures.

Some may view whistleblowing as a negative thing. Perhaps wasting valuable management time on people raising grievances just in another form. However, the better view is that it gives senior management an opportunity for insight into matters that are going on in your organisation in an unvarnished way and not subject to management "filters" as the issue is reported up. Or is it simply being stymied once it is identified by junior or middle management ?

The Directive provides protection, which extends beyond current employees, to former employees, the self-employed, subcontractors, suppliers and even job applicants, to name but a few.

In order to qualify for protection, the Whistleblower must have reasonable grounds to believe the information divulged was true at the time of reporting and be reported via the internal, external or public channels provided.

Protection is provided against all retaliation as a result of the report and in any court proceedings relating to any detriment suffered by the Whistleblower, the burden of proof is reversed, meaning that the employer must prove no detriment.

The Directive will provide the employees of more than 250,000 organisations (*) across the EU the opportunity to report breaches of EU Law. Where Member States individually decide to expand the scope of the Directive, other matters including breaches of National Law can be reported, which can only be a good thing.

These are just a snapshot of the positives that the Directive brings.

However, all organisations implementing such programmes and procedures, especially those doing so for the first time, face challenges and important decisions, so as to ensure compliance with the Directive.

They must meet the minimum criteria, not only in the provision of reporting channels, but also in relation to diligent investigation and response.

Compliance with GDPR must be achieved in relation to the reporting channels and storage of data.

There are time constraints in relation to not only the acknowledgement of reports received, but also in relation to feedback.

Organisations do have the option to outsource the operation of reporting channels and investigations to third parties, providing all safeguards are applied.

However, organisations are required to designate a competent impartial person or department, responsible for following up on Whistleblowing Reports.

In addition to diligently following up Whistleblowing Reports, organisations should also consider how they will triage such reports.

Those responsible for the implementation of the Directive should ask themselves:

- Who within the organisation, in addition to their core responsibilities can prioritise and correctly categorise the Whistleblowing Reports?
- Who can identify when a matter requires immediate action or may be subject to a potential regulatory risk?
- Who knows what the first steps to take are?

These are areas where many organisations simply do not have knowledge and experience available in house.

In conclusion, the EU Whistleblowing Directive will provide more people across many more countries the opportunity to report unlawful conduct. This is a good thing.

However, the obligations and additional responsibilities that many organisations face to ensure compliance with the Directive, will be challenging from financial, resourcing and experience perspectives.

*Statista