

Whistleblowing

Implementing the EU Directive in practice



Speakers



Pilar Menor
**Global Co-Chair,
Employment/Senior Partner - Spain**
Madrid
+34917887368
Pilar.Menor@dlapiper.com



Ciara McLoughlin
Partner
Dublin
+35314365464
Ciara.McLoughlin@dlapiper.com



George Nicholson
Partner
Manchester
+441612354141
George.Nicholson@dlapiper.com



Samir Buhl
Senior Associate
Hamburg
+494018888104
Samir.Buhl@dlapiper.com

Overview: Whistleblower Protection Directive

Directive

EU 2019/1937 of
23 October 2019 on the
**protection of persons who
report breaches of Union
law**

Implementation

- Implementation deadline for Member States was 17 December 2021
- Many only complied in 2023 & 2024
- Poland last to implement with internal reporting channel required by 25 September 2024

Scope

Breaches of certain EU laws including:

- public procurement
- public health
- financial services
- product safety
- transport safety
- environment protection
- radiation protection / nuclear safety
- food and feed safety, animal welfare
- consumer protection
- protection of privacy and personal data

Protection

Protection covers a wide range of individuals who report breaches, including **current and former**:

- workers including part-time, fixed-term and agency workers
- self-employed
- shareholders
- contractors, subcontractors, suppliers
- volunteers
- trainees
- job candidates / new recruits

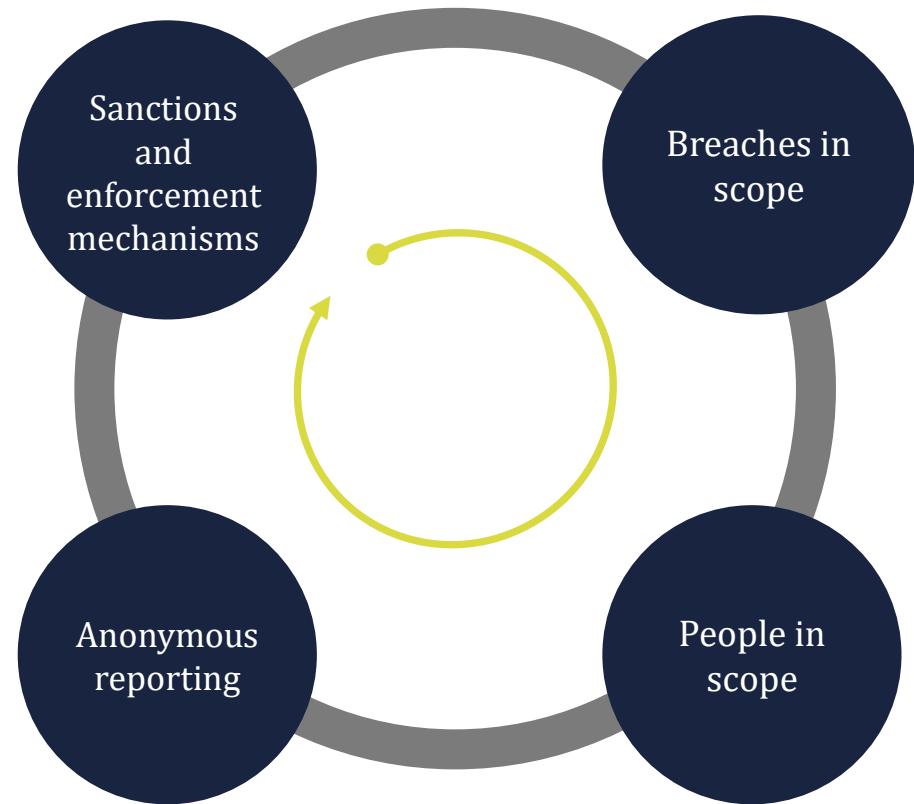
Key provisions

- Comprehensive protection against retaliation for people who report relevant breaches.
- Whistleblower can choose to report internally or externally.
- Obligation for employers to set up and operate internal reporting and follow-up channels.
- Requirements for internal channels vary by business size:
 - Under 50 workers;
 - 50 to 249 workers;
 - 250 + workers.



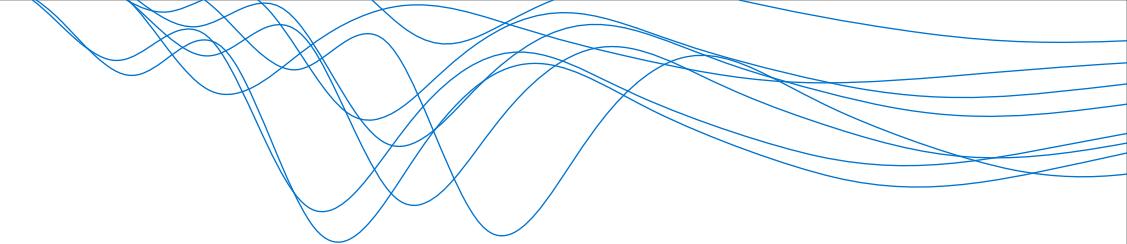
Country implementation

different approaches



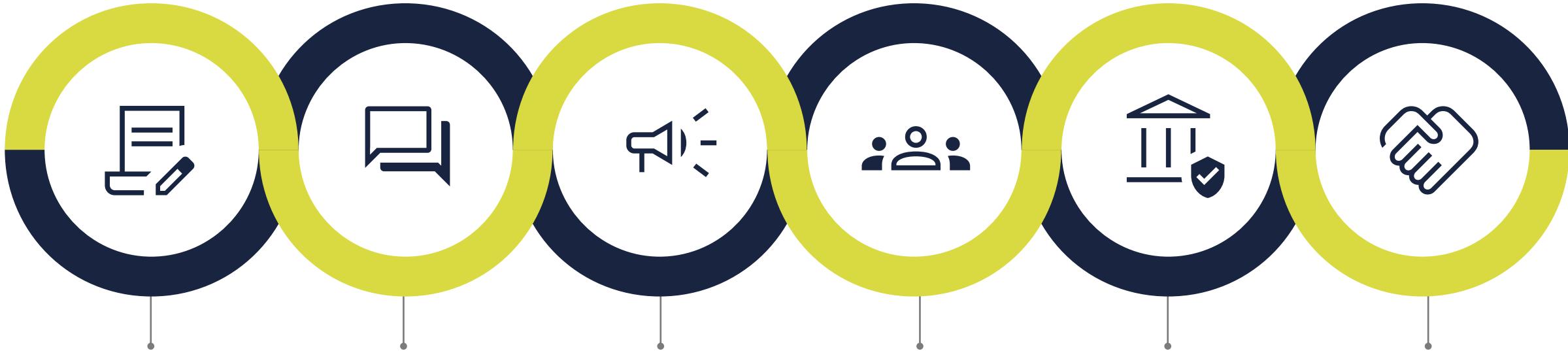
Sanctions

Potential sanctions must be considered when assessing risk tolerance level



	Criminal sanctions	Administrative sanctions	Individual enforcement action	Risk of personal liability
Not implementing internal reporting channel	Denmark, Ireland, Belgium	Netherlands, Italy, Sweden, Germany, Belgium, Luxembourg		
Preventing or hindering reporting	France, Ireland, Belgium	Italy, Belgium, Germany, Austria, Luxembourg	Netherlands, Sweden	France Ireland Denmark Belgium Austria Luxembourg
Retaliation / Penalisation	Belgium, Ireland	Italy, Spain, Belgium, France, Germany, Austria, Finland, Luxembourg	Belgium, France, Denmark, Sweden, Germany, Ireland, Austria, Finland, Luxembourg	
Breach of confidentiality	Sweden, Netherlands, Belgium, Ireland, Denmark, France, Finland	Italy, Spain, Belgium, Germany, Austria, Luxembourg	Ireland	

Hot topics for global employers



Calculating thresholds

Using a group-wide whistleblower reporting channel

Who to designate to manage local reporting

Guidance from/information sharing with central group functions

Outsourcing to a 3rd party provider

Involving employee representatives

What approaches have businesses taken?

For most businesses, their approach is dictated by their risk tolerance level and existing arrangements

Approach	Risk level (1 low – 5 high)
Full local compliance	1
Global approach: EU Directive compliant with local variations where required	2
Global approach: EU Directive compliant without any local variations	3
Global approach: non-EU Directive compliant	4
No action	5

Future developments

- European Commission activity: 2024 transposition review; 2025 call for evidence; Commission evaluation report due in 2026. Review highlighted where new laws do not meet the Directive's requirements. E.g.:
 - Personal scope: omitting e.g. contractors and suppliers.
 - Incorrectly including consideration of whistleblowers' motives for reporting as a condition for protection.
 - Allowing corporate groups to set up reporting channels solely at group level, so exempting entities in the same group from the obligation to set up their own internal channel.
- NGOs pursuing shortcomings in country transposition with European Commission and looking for opportunities to support claims to highlight improper transposition.
- Competent authorities expected to introduce new regulatory guidance and then ramp up enforcement action for non-compliance.
- Some organisations seeing an increase in use of hotlines as individuals become more familiar with new rules/rights and protections offered to them by new whistleblowing regimes.



Questions?

