

# Whistleblowers Welcome: EU Sets New Direction for European Compliance

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# EU Directive on Whistleblower Protection

## Fast Facts

- *Expands* to over 12 policy fields
- *Includes* civil servants, the self-employed, shareholders, management, administrative or supervisory bodies, volunteers, paid or unpaid trainees, contractors, subcontractors and suppliers, individuals disclosing breaches during a recruitment process and former workers
- *Covers* information, including reasonable suspicions, about actual or potential breaches, which occurred or are very likely to occur in the organisation in which the reporting person works or has worked *or* in another organisation with which the reporting person is *or* was in contact through his or her work, *and* about attempts to conceal such breaches

## Internal Reporting & Follow up (Articles 7-9)

- Companies with 50 or more employees
- Reporting may be established internally by a person or department designated for reporting or may be provided externally by a third party
- Within 7 days of reporting, whistleblower must receive acknowledgment
- ‘Feedback’ not exceeding 3 months
- Designed, established and operated in a secure manner and ensuring of confidentiality

# New Model for how Companies Respond to Internal Whistleblowers?

# Not a new model...

- US: Internal WB reporting mechanisms have been required since Sarbanes-Oxley
  - Reaction to Enron
- U.K.: Enacted Senior Managers Certification Regime (SMC&R) where financial services companies w/ 50+ people are required to have internal reporting mechanism through which employees may report anonymously and to appoint a whistleblower champion within the organization
  - Reaction to financial crisis
- In continental Europe, some countries, like France, require internal reporting

... but EU Directive aims to go further by pushing for a *rethink* of corporate best practices & embrace whistleblowers

- Whistleblowers as risk detectors
  - canaries in the coal mine, early warning system against fraud/malfeasance.
  - Example: Dieselgate/Volkswagen. There were 20-30 whistleblowers who reported internally and were ignored. Culture of silence.
- Whistleblowers as an asset not a liability
  - WBs are good for company's bottom line:
  - Empirical Data/Research supporting benefits of having a whistleblower reporting mechanism that is trusted and which employees use frequently. Direct correlation between the more actively a hotline is used and the fewer enforcement actions and lawsuits against company and those lawsuits that persist settle for much less.
- Expanding the definition of WB to be more inclusive:
  - Prospective and former employees
  - WBs' family members & businesses
- Directive includes a Duty on Part of Employer / Enforcement to listen to WBs and report back on actions taken

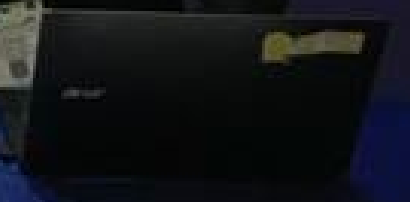
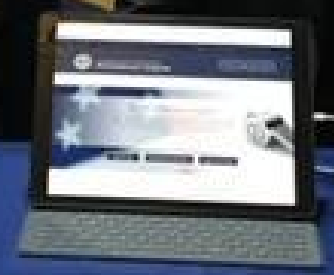
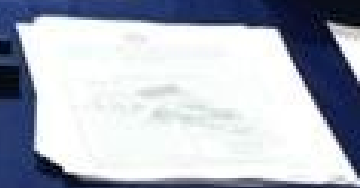


ower Office

.S. Commodity Futures  
Trading Commission

Provides monetary awards to  
persons who voluntarily report  
violations of the Commodity  
Exchange Act, if the information  
leads to an action that results in  
more than \$1 million in monetary  
penalties.

COMMODITY FUTURES TRADING COMMISSION



# It's a Floor, not a Ceiling.

*Additional measures in Transposition Process for Member States to consider:*

- U.S. model – payment of compensation to whistleblowers – net present value of a career lost
- Article 11 – creation of Office of the Whistleblower – clear channel through which WBs can make protected disclosures
- Expand definition of “facilitators” to include journalists. Journalists suffer same detriment as WBs for publicising their information.



# Whistleblower Law & Other Regimes

- Privacy/GDPR
- Trade Secrets Directive – Art. 5; exception for WBs to need to maintain secrecy.
  - Tyler Shultz/Theranos – Fraud is not a Trade Secret
- EU Directive – NDAs, Trade Secret laws cannot be used to silence/gag WBs.