

# The Danish Act on Protection of Whistleblowers

April 2022



Audit. Tax. Advisory.





Background

# The EU Directive

- So-called “scandals” have harmed public, national and EU economic interests
- Workforce is often first to know



- Whistleblower protection in EU is scattered
- Fear of retaliation
- Whistleblowers are discouraged



- EU-wide harmonisation as of 17 December 2021
- Legal obligation to install reporting channels
- Minimum standards (but national implementation required!)
- Protection against retaliation



# PwC's Global Economic Crime and Fraud survey (2021):

# 46%

Of companies has been the victim of fraud and financial crime within the last two years ...

On average, companies have experienced 6 cases of fraud in the last 24 months.

## Top 4 types of fraud of 2021





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A whistleblower scheme is an effective tool for enhancing trust and transparency and for preventing fraud and corruption or non-compliance with laws.

# Advantages of a whistleblower scheme





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## The Danish Act on Protection of Whistleblowers

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## Scope

On 7 October 2019, the Council of the European Union adopted the Whistleblower Directive, which imposes an obligation on companies with 50 or more employees and all public authorities to establish a whistleblower scheme.

The EU directive has been transposed into a Danish Act on Protection of Whistleblowers which came into force on the 17 December 2021.

The new regulation will impose an obligation to establish an internal whistleblower system through which employees can report breaches of EU legislation, and other types of serious breaches or other serious matters, including cases of sexual harassment, serious interpersonal conflicts in the workplace, serious harassment, criminal offences, including breach of a confidentiality duty, misuse of financial funds, theft, fraud, embezzlement, bribery and corruption.

## Requirements

The whistleblower scheme must fulfill the following requirements:

- It must be possible for whistleblowers to raise concerns either orally or in writing through the whistleblower scheme
- The whistleblower scheme must be operated and administered by an impartial person or department, that is competent to follow up on reports
- The scheme must ensure that the identity of the whistleblower is kept confidential
- The whistleblower is entitled to receive confirmation of receipt of the report within seven days
- The whistleblower is entitled to receive feedback as soon as possible and no later than three months after the confirmation of receipt

The implementation of and the procedures for the scheme must be documented in writing.

## About retaliation

The new regulation introduces protection against retaliatory measures taken vis-à-vis whistleblowers.

Retaliatory measures are defined as any form of disadvantageous or unfair treatment of the whistleblower as a result of the reporting, including:

- Suspension
- Termination
- Degradation or failure to promote
- Transfer of duties, transfer, pay reduction, changes in working hours
- Coercion, intimidation, discrimination, harassment or exclusion in the work place

The purpose of these rules is to ensure that whistleblowers are not deterred for fear of being "punished" unjustly with such retaliation.

# Relevant dates

## 7th October 2019

The EU Council of Ministers adopted the Whistleblower Directive, which obliges employers with 50 or more employees and all public companies to establish a whistleblower scheme.

## 17th December 2023

Employers with 50-249 employees must establish a whistleblower scheme by 17 December 2023.

## 17th December 2021

The Whistleblower Act which is to implement the directive enters into force.

Employers with more than 250 employees must establish a whistleblower scheme by 17 December 2021.

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Any information, including reasonable suspicion, of actual or potential violations that have taken place or will in all likelihood take place in the organization in which the whistleblower works or has worked, or in another organization with which the whistleblower is or was in contact through his work, as well as on attempts to conceal such violations.

- oral or in writing...



# Reportable breaches

## Breaches of Union Law

Breaches of specific Union Acts

Breaches affecting the financial interest of the Union

Breaches relating to the internal market

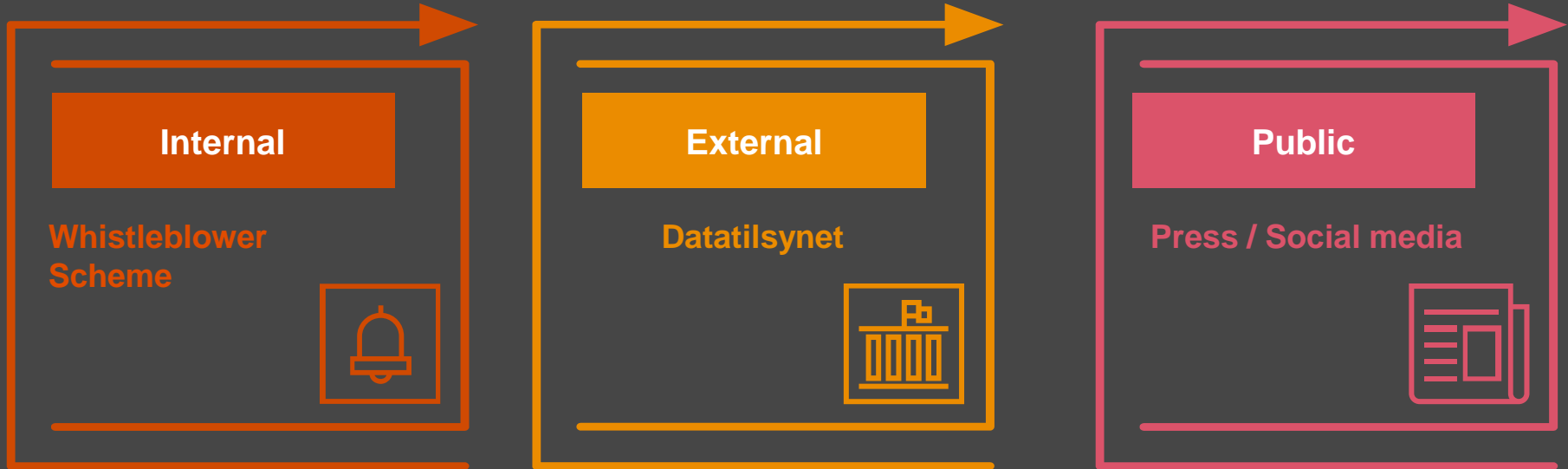
**Minimum standards:**  
Member States can tailor  
the scope to include other  
subject matters



**Denmark:**  
Sexual harassment, serious  
interpersonal work conflicts  
and other serious matters.

# Reporting channels

Reporting can be internal, external or public



# Event timeline

## Internal reporting channel

X

X + 7 days

X + ...

X + 3 months

**Reporting of the  
breach via the  
internal reporting  
channel**

**Acknowledgment  
of receipt of the  
report**

**Designate person  
/ department for  
following-up on  
the report**

**Provide  
feedback**



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An effective  
whistleblower scheme

# Building blocks of an effective whistleblowing programme



# Planning & design



Draft or update policies and procedures (incl. compliance assessment with EU Directive and other relevant legislation)



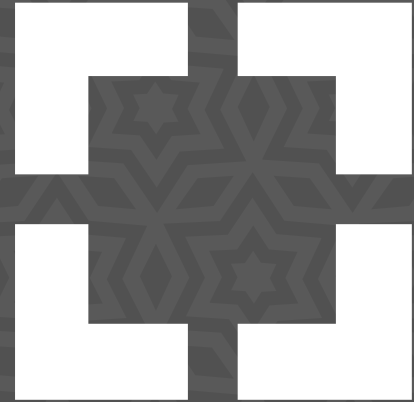
Define technical requirements for your organisation



Assign responsibility (whistleblower unit) and train relevant employees



Design and test fit-for-purpose operational workflows



# Implementation



Set-up digital solution that ensures the highest security standards



Encourage whistleblowers to use the whistleblower scheme



Ensure GDPR compliance and compliance with EU Directive



Create internal and external awareness campaigns



# Case management



Perform a preliminary analysis of the merits of the facts



Perform an independent and confidential investigation



Communication with the whistleblower (incl. anonymous interaction)



Involvement of experienced multidisciplinary team



# Report



Report and qualify identified issues



Propose mitigating measures



Establish a protocol to inform the whistleblower



Transfer information to relevant stakeholders



# Continuous improvement



Report key trends via interactive dashboards



Perform risk assessment



Perform a weak point analysis of the programme



Amend processes where necessary



# Relevant considerations

## WHISTLEBLOWERS

**A whistleblower scheme must be made available to employees. There is no requirement to receive reports from external parties and their employees, e.g. suppliers, customers etc. However, there are many advantages by making the whistleblower scheme available for reports from external parties.**

Whistleblowers are not necessarily employees of your organization. Your partners and other external parties may have important knowledge. There is a positive signal value when implementing a scheme that is made available to external stakeholders and the outside world. The scheme can be used to signal your expectations, to both employees but also external parties when it comes to business ethics and zero tolerance in relation to offenses in the value chain. If the external parties are cut off to report via an internal channel, they might be forced to go directly to the press or use another external scheme.

## ANONYMITY

**Should the scheme handle anonymous reports? Although there is no obligation to receive and investigate anonymous reports, such reports can provide valuable insight and can help build trust around the scheme.**

Anonymity can encourage whistleblowers to come forward. Tools on the market can enable dialogue with anonymous whistleblowers.



# Outsourcing to an external third party?

## Proper use of internal resources

Having to deal with the scheme yourself can be a heavy burden in terms of resources. If an external party handles the scheme, you can focus on what you are good at and only use resources to process real cases.

An external party can provide sparring in relation to the processing of notifications in relation to:

- Rights of affected persons/GDPR
- Investigations steps to be taken (securing data, legal advice, review of accounting material)
- Advice on employment law, handling interviews with whistleblowers and persons involved (especially in cases of sexual harassment etc.)

## Objectivity, confidentiality and independence

As it is central to be able to guarantee objectivity, confidentiality and independence and avoid conflicts of interest, outsourcing the management of your whistleblower scheme to a third party may be the right solution.

The objectivity and independence of the whistleblower scheme is ensured by creating an appropriate distance between the whistleblower and his workplace. It provides security and creates trust around the scheme. A setup that is independent of the company also ensures integrity in relation to reports concerning the top management and the board. In addition, it provides access to external expert knowledge and resources to carry out competent and confidential investigations.

# Don't fall into the trap



**Don't let personal opinions guide you**



**Don't give the rumor mill a chance**



**Don't consider the whistleblower an enemy**



**Don't underestimate the risks**



**Don't take protective measures reactively**



An aerial photograph of a road with a red car, overlaid with a large white number 4.

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Q&A

# Thank you for your time



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