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Delayed EU Whistle-blower Directive to enter into force

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After a year's delay, the EU Whistle-blower Directive has been transposed into national law and is expected to enter into force in March 2023. From 18 December 2023, after an expected transitional period, companies with at least 50 employees will be obliged to set up internal reporting channels, or whistle-blower systems, for anonymous employees to report wrongdoing. Employees are protected from reprisals.

In addition to the delayed implementation, however, the following points have been criticised. These points, according to critics, mean that the new law falls short of expectations:

- Whistle-blower protection is incomplete – Violations of EU regulations, including product safety and animal welfare, are covered but have been extended nationally only to anti-corruption provisions. Other equally important offences are missing from the catalogue of protected whistle-blowing. For example, fraud and embezzlement are not covered, nor is sexual harassment. Anyone who reports such misconduct as an employee is therefore not protected.
- Labour law violations are not covered – violations of mandatory labour law standards (eg, working time law), serious misconduct (mobbing), and even discrimination in the workplace are not covered by the law. The legal protection against reprisals therefore does not apply in these cases, either. If the system is voluntarily extended to these cases, a separate data protection impact assessment is required. This does not apply in the cases regulated by law.
- There is no obligation to follow up anonymous tips.
- The law contains no penalties for companies that fail to set up the envisaged internal reporting line – It appears that the legislature trusted that companies will set up such mechanisms in their own interest. While this may be true for larger companies or internationally operating organisations, smaller businesses might wish to avoid the cost.
- It is also unclear whether whistle-blowing systems are control systems that affect human dignity and therefore require the mandatory consent of the works council (or, in companies without a works council, the consent of each individual employee). There are good arguments against this, but a statutory clarification would have avoided a potential pitfall.

Practice will show whether the new regulation fulfils expectations. The limited scope of application, however, demonstrates, at best, a cautious attempt to realise the goals of the law. These are to "encourage the willingness to act lawfully" and "to protect whistle-blowers from personal disadvantages".

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