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# Austrian Whistleblower Protection Act: key changes

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### Introduction

In 2023, both the EU Work-life Balance Directive<sup>(1)</sup> and the EU Whistleblower Protection Directive<sup>(2)</sup> were transferred into national law. This article forms the second part of this two-part series,<sup>(3)</sup> highlighting the main changes introduced by the Whistleblower Protection Directive. The Whistleblower Protection Directive has been implemented in Austria with the introduction of the Whistleblower Protection Act (HSchG).

### Scope

The HSchG applies to persons (whistleblowers) who have obtained information about violations of law due to a current or previous professional relationship with a legal entity in the private or public sector. In particular, these persons include

- employees;
- job applicants;
- interns; and
- self-employed persons

### Material scope

In general, companies and legal entities in the public sector with 50 or more employees are obliged to set up internal reporting channels. Regardless of the number of employees, the establishment of a whistleblower system applies to the following areas, among others:

- financial services;
- financial products;
- financial markets; or
- prevention of money laundering and terrorist financing.

Violations of regulations in one of the following areas are covered:

- public procurement;
- financial services, financial products and financial markets, and prevention of money laundering and terrorist financing;
- product safety and conformity;
- transport safety;
- environmental protection;
- public health;
- consumer production;
- protection of privacy and personal data and security of network and information systems; and
- prevention and punishment of certain corruption offences.

However, notifications of violations of labour law regulations (eg, working hours, holiday law, dismissal regulations and wage dumping) are not covered by the scope of protection of the HSchG.

### Implementation period

Companies and legal entities in the public sector with 250 or more employees already had to set up a whistleblower system by 25 August 2023, whereas companies and legal entities with fewer than 250 employees had a longer implementation period, which will have ended on 17 December 2023.

### Internal and external reporting channels

#### Internal channel

The internal units need to be equipped with the necessary financial and human resources to fulfil their tasks. They must be planned, set up and operated in such a secure manner that the confidentiality of the identity of the whistleblower and third parties mentioned in the report is maintained.

Internal units have to act impartially and without bias when receiving and handling reports. It must be possible to provide information to the internal office in writing or verbally or in both forms. At the request of a whistleblower, a meeting must be held to discuss the report within 14 days.

In addition, every report by a whistleblower needs to be checked for its validity. No later than three months after receiving a report, the internal unit has to inform the whistleblower:

- what follow-up measures the internal unit has taken or intends to take; and
- the reasons why the internal unit is not following up on the report.

#### **External channel**

The Federal Bureau of Anti-Corruption is generally set up as an external reporting office and is responsible for handling reports, unless another authority is responsible for the area in question (eg, Financial Market Authority and Federal Competition Authority).

Whistleblowers should primarily contact the external reporting office if processing via the internal system is not possible, not appropriate, unreasonable or has proven to be unsuccessful or futile.

#### **Protection from retaliation**

Whistleblowers who provide information based on a lawful report in accordance with the HSchG are to be protected from unfavourable consequences. Accordingly, any retaliatory measure is inadmissible. This includes:

- suspension, termination or comparable measures;
- non-renewal or premature termination of a fixed-term employment contract;
- demotion or denial of promotion;
- transfer of duties;
- change of place of work;
- reduction in pay;
- change in working hours;
- refusal to participate in further training programmes;
- negative performance appraisal or issue of a poor reference;
- disciplinary action, reprimand or other sanction, including financial sanctions;
- early termination or cancellation of contract for goods or services; and
- withdrawal of a licence or permit.

If whistleblowers experience measures such as coercion, intimidation, harassment or the like, they are not only entitled to restoration of the lawful situation, but also to compensation for damages.

#### **Penalties**

An offence against the HSchG is punishable by an administrative fine of up to €20,000, or €40,000 in the event of a repeat offence.

An administrative offence is committed by anyone who;

- obstructs or attempts to obstruct a whistleblower, the whistleblower's supporter or persons in the whistleblower's circle in connection with a whistleblowing offence or puts pressure on them through willful legal or administrative proceedings;
- takes a retaliatory measure of whistleblowing;
- violates the provisions for the protection of confidentiality; or
- knowingly gives false information.

Interestingly, Austrian lawmakers did not include penalties for failure to implement a reporting system, and it remains to be seen whether Austrian employers, in particular smaller ones, will all comply with the new legal framework.

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#### **Endnotes**

(1) Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

(2) Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of European Union law.

(3) For the first part of this series, please see "[Implementation of Work-life Balance Directive and EU Whistleblower Protection Directive](#)".