




Whistleblowing: The European Landscape

	 Belgium	 France	 United Kingdom
ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?	<p>Yes, Limited</p> <p>Financial institutions must have internal whistleblowing policies.</p> <p>Public sector employees of the Federal and Flemish regional governments must be able to make whistleblowing reports.</p> <p>If a company decides to implement a policy, the Belgian Privacy Commission recommends a framework, which should be followed.</p>	<p>Yes</p> <p>Companies with more than 50 employees are required to implement a reporting system.</p> <p>Any company with:</p> <ul style="list-style-type: none"> > at least 5,000 employees (including branch offices) whose headquarters is located in France; or > at least 10,000 employees whose headquarters is located in France or overseas, is required to implement a "vigilance" scheme to identify risks and prevent serious violations of human rights and fundamental freedom, health and safety of people, and the environment (article L.225-102-4 of the French Commerce Code); <p>Companies with more than 500 employees (or which belong to a group whose parent company is headquartered in France and has more than 500 employees) and with a turnover greater than €100 million are required to implement internal reporting procedures for bribery and corruption as part of a more extensive compliance programme; and</p> <p>Companies providing financial services are required to implement reporting systems for breaches of EU and French financial market regulation.</p>	<p>Yes, Limited</p> <p>Since September 2016, certain firms regulated by the Financial Conduct Authority and the Prudential Regulatory Authority (FCA/PRA) are required to establish, implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by whistleblowers. This should include training and reporting of concerns to regulators by employees. Firms must appoint a Whistleblower's Champion to oversee access to whistleblowing rights.</p> <p>Listed companies - the Corporate Governance Code which applies to accounting periods beginning on or after 1 January 2019, provides there should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The board should routinely review this and the reports arising from its operation. The board should ensure that arrangements are in place for the proportionate and independent investigation of matters reported and the follow-up action. The code operates on a 'comply or explain' basis and it states that companies should avoid a 'tick-box approach'.</p> <p>Large private companies (including their unlisted subsidiaries) will be subject to new corporate governance reporting requirements for financial years starting on or after 1 January 2019. All UK companies with at least 250 UK group employees must report on their employee engagement arrangements. A company can choose to make its own report or it can adopt the Wates Principles. A company that adopts the Wates Principles should follow them using an 'apply and explain' approach in a way that is most appropriate for their particular organisation. Under Principle Six, Stakeholder relationships and engagement, companies should develop a range of formal and informal channels to engage in dialogue with their workforce and senior management, these policies should establish clear procedures for raising concerns (for example, speak up and whistleblowing policies), which should be reviewed regularly to ensure that they are effective.</p>
ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?	No	No	No




Whistleblowing: The European Landscape

	 Belgium	 France	 United Kingdom
ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?	<p>Yes, Limited</p> <p>Public sector employees and those working in the financial sector are protected against civil, criminal and disciplinary sanctions, if they have acted in good faith.</p> <ul style="list-style-type: none"> > Public sector employees of the Federal and Flemish regional governments cannot be dismissed or subjected to disciplinary measures for two years after making a report. > Financial sector employees cannot be dismissed within at least 12 months after the whistleblowing event or – if longer – until the final decision in the court case related to the event on the basis of which the whistleblowing has occurred, unless the employer can prove that the dismissal was not related to the whistleblowing. If the employee is wrongfully dismissed within this period, they will be entitled to compensation of 6 months' remuneration or if higher the amount of loss suffered. <p>There are no specific protections for private sector employees. However, if the whistleblowing disclosure involves processing personal data, protection of the employee's personal data and data privacy legislation will apply.</p>	<p>Yes</p> <p>A whistleblower cannot be discriminated against or dismissed because they have made a report.</p> <p>If they do suffer a detriment as a result of making a report, the burden of proof rests with the employer to prove that the action was justified and not related to the whistleblowing.</p> <p>The whistleblowing system must ensure the whistleblower's identity remains confidential.</p> <p>Article 122-9 of the French Criminal Code has been amended to protect the whistleblower from criminal liability in certain circumstances.</p>	<p>Yes</p> <p>Workplace whistleblowers are legally protected from suffering "a detriment" on the grounds of making a protected disclosure and/or from being dismissed in consequence of making a disclosure. The individual must reasonably believe the disclosure to be in the public interest. Disclosure to the employer is encouraged. Compared to other categories of worker, whistleblowers are entitled to enhanced protection if they are dismissed, including unlimited compensation and the removal of any minimum length of service requirement for bringing a claim.</p> <p>FCA/PRA firms are required to put extra measures in place for protecting whistleblowers, including:</p> <ul style="list-style-type: none"> > ensuring that whistleblowers do not suffer victimisation from others at the firm; and > providing feedback to a whistleblower.
ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS	No	No	No
CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?	<p>Yes</p> <p>With effect from 3 January 2018, if a financial institution fails to comply the FSMA can impose administrative fines on the board of directors, executive committee or senior management.</p> <p>This can be up to a maximum €2.5m (which can be multiplied by 3 if the failure has resulted in a material gain).</p> <p>The fine and the name of the persons involved may be published on the FSMA website.</p>	<p>Yes</p> <p>For companies with more than 50 employees:</p> <ul style="list-style-type: none"> > interfering with the making of a whistleblowing disclosure to the employer, a line manager, the courts, or administrative authorities is punishable by up to one year's imprisonment and a €15,000 fine (€75,000 for corporation); > Disclosing confidential information relating to a report is punishable by up to two years' imprisonment and €30,000 fine (€150,000 for corporation); > Abusive, defamation or legal action against a whistleblower is punishable by €30,000 civil fine (€150,000 for corporation). <p>Companies and relevant corporate officers/ managers who fail to implement the required policy may be subject to different sanctions, e.g. a warning and an order to implement the required process, financial penalties of up to €200,000 for natural persons and up to €1,000,000 for corporations.</p>	No
ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?	No	No	No




Whistleblowing: The European Landscape

	 Germany	 Italy	 Luxembourg
ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?	<p>Yes, Limited</p> <p>Regulated financial institutions must set up (in accordance with the Germany Banking Act – Kreditwesengesetz)) a process which allows employees to report violations or other criminal activity to an appropriate body. This must ensure the confidentiality of the identity of the employee.</p> <p>The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistung – BaFin) whistleblowing hotline is available for persons to report who have a special knowledge of the organisation's internal affairs (eg employees, contractors). This only applies to organisations which are supervised by BaFin. The hotline is confidential and the whistleblower will be protected under labour and criminal law.</p>	<p>Yes</p> <p>New laws came into force in December 2017. Private companies which have an organisational structure under article 6 of legislative decree no. 231/2001 ("modello organizzativo 231") must implement a whistleblowing policy.</p> <p>The company must make available (to employees) at least one IT reporting channel (e.g. e-mail) and this must ensure the whistleblower's identity remains confidential. The reporting channel is for criminal offences listed under the legislative decree which includes criminal offences against the individual - delitti contro la personalità individuale; market abuse-abusi di mercato), and any breach of the relevant organisation's structure, management or control.</p> <p>Since May 2015, under legislative decree no. 385/1993 (the Italian Banking Law), banks must ensure there are whistleblowing policies which allow employees to disclose irregularities or breaches of laws governing banking activities. The procedures must: (i) ensure confidentiality of personal data of both the whistleblower and the individual against whom the report is made; (ii) protect the whistleblower against any discriminatory action; and (iii) provide for a dedicated and independent reporting channel.</p> <p>Since July 2015, companies listed on the Italian Stock Exchange (Borsa Italiana) must comply with the Corporate Governance Code which provides companies must put in place policies to allow employees to disclose irregularities, breaches of laws and internal procedures. The Corporate Governance Code is not mandatory and applies on a "comply or explain" basis.</p> <p>At the same time the rules for financial services companies were strengthened: the person responsible for the internal reporting system must promptly report any relevant misconduct.</p>	<p>Yes, Limited</p> <p>Since July 2013, certain firms regulated by the Luxembourg Financial Sector Supervisory Authority (CSSF) must put in place a whistleblowing policy, these include credit institutions, investment firms and professionals performing lending operations.</p>
ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?	No	No	No
ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?	<p>Yes, Limited</p> <p>Whistleblowing cannot as a general rule, be accepted as a reason for dismissal.</p> <p>An employee may not be discriminated against or reprimanded because they have "exercised their rights in a permissible way", which includes being a whistleblower, although there are exceptions to this. Whether an employee is dismissed because of whistleblowing is judged on a case by case basis.</p>	<p>Yes</p> <p>Companies must:</p> <ul style="list-style-type: none"> > guarantee the whistleblower's confidentiality; > protect the whistleblower against any reprisals or discrimination; and > ensure there are disciplinary procedures in place to take against anybody who breaches these protections. <p>In addition, in the private sector if any discriminatory action is taken against the whistleblower, the whistleblower can report this to the National Labour Inspectorate and to any relevant trade unions.</p> <p>Any discriminatory or retaliatory action taken against the whistleblower would be regarded as not valid.</p>	<p>Yes, Limited</p> <p>An employee cannot be dismissed because he has taken action that amounts to whistleblowing. He is also protected against any unfair treatment for having made a report or notified the relevant authorities(eg the CSSF).</p> <p>The employee should have acted in good faith.</p> <p>The confidentiality of the whistleblower must be protected.</p>




Whistleblowing: The European Landscape

	 Germany	 Italy	 Luxembourg
ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS	No	No	No There has been recent debate prompted by civil society organisations and a high-profile judicial case which has raised the issue of whether the law needs to be strengthened. No reforms have been put forward.
CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?	Yes If an employer fails to act appropriately to information disclosed by a whistleblower, the employer may be liable for a breach of its statutory supervisory obligations. The management board may be liable if legal offences or crimes could have been prevented if the company had established an appropriate system of supervision. This could include failure to address issues raised by a whistleblower and to prevent any further legal offences. A fine of up to €1,000,000, or more in certain cases, may be payable.	Yes, Limited If a criminal offence takes place because the company has failed to put in place an appropriate whistleblowing policy, the company could be subject to a fine or an injunction from carrying on business activities for a certain period. In the bank sector, if a bank fails to implement a specific whistleblowing policy which is compliant with the provisions of the Italian Banking Law, it may be liable for an administrative fine ranging from €30,000 to 10% of its turnover, (a fine is not specifically in relation to failure to implement a whistleblowing policy but for any breach of the provisions of the Banking Law).	Yes, Limited A company could face a penalty for failing to implement a policy.
ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?	No	No	No

Whistleblowing: The European Landscape

	 The Netherlands	 Poland	 Portugal
ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?	Yes From 1 July 2016, private companies with at least 50 employees and all public institutions must have an internal reporting procedure. In addition, the 2016 Corporate Governance Code requires companies listed on the Dutch stock exchange to have whistleblower procedures in place. Certain financial institutions are required to have an "incident notification policy" in place.	Yes, Limited Banks, investment firms and other financial institutions must have whistleblowing policies.	Yes, Limited It is mandatory for financial institutions to have whistleblowing policies. Listed companies must publish on an annual basis whether they have a whistleblowing policy (this is part of the corporate governance code required by the regulator).
ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?	No	No	No
ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?	Yes The employer may not terminate the employment agreement of a whistleblower or otherwise subject the employee to unfair treatment (see below if the employee has approached the House of Whistleblowers). The employee may approach the House of Whistleblowers (an external agency), after first reporting the wrongdoing internally. The House will then advise the whistleblower about the next steps, which may include investigating the whistleblower's allegations and making recommendations.	Yes, Limited A whistleblowing policy must contain protection for whistleblowers against discrimination or any other forms of unfair treatment. Where a report has been made directly to the PFSA, it must maintain appropriate standards of protection of personal data of the whistleblower. The whistleblower may request to remain anonymous. Polish labour law does not contain any specific provisions protecting whistleblowers.	Yes Protection is available to employees who make a report and any disciplinary sanction (which could be related to the report) is deemed as abusive if it occurs within one year after the report. Employees must also have their anonymity protected; they may request a transfer from their workplace; (this cannot be refused); and they are protected by the same rights as witnesses under criminal proceedings. The identity of employees of financial institutions must be kept confidential until legal proceedings are brought. Also the report cannot be used to bring proceedings against the whistleblower unless the claims were deliberately and manifestly unfounded.
ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS	Yes An extension to the law has been announced for protection to include a person who is outside the company but who came into contact with the activities of the company.	Yes Draft legislation introduced in January 2019, on "the liability of collective entities for prohibited acts" provides that companies (including legal persons, companies with state participation and Polish branches of foreign entities) must introduce procedures for individuals to raise concerns if they suspect irregularities and there must be a process to conduct investigations, a so-called "compliance system". The draft legislation also sets down severe penalties for collective entities found to have carried out prohibited acts, including fines ranging from PLN 30,000 to PLN 30,000,000, with a possibility that the company may be dissolved. The act is expected to be passed by parliament during 2019.	No
CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?	No	Yes The PFSA may impose a penalty up to 10% of the bank's/investment firm's annual income disclosed in the last financial statements for non-compliance with statutory provisions of law, including provisions on whistleblowing.	Yes A failure to comply with a mandatory requirement to have a whistleblowing policy may result in a fine up to €1,500,000.
ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?	No	No	No

Whistleblowing: The European Landscape

	 Spain	 Sweden	 Switzerland
ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?	No Companies which are listed must comply with the Unified Good Governance Code, this operates on a 'comply or explain' basis.	No	No
ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?	No	No	No
ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?	Yes, limited Spanish case law protects employees from any unfair treatment by the employer because the employee has made a report. The so-called "indemnity guarantee" (" <i>garantía de indemnidad</i> ").	Yes Whistleblowers are protected under various laws and expressly from any retaliatory action by their employer where they have raised concerns with the employer/trade union in the first instance related to criminal and other offences. There is also some protection available to those reporting less serious conduct. Protections can be found in collective bargaining agreements.	Yes, Limited Public sector If a report is made to the Swiss Federal Audit Office (SFAO), the employee is protected by legislation. A whistle-blower may not be subjected to any detriment as a result of making a report. Private sector There are no specific protections, except limited degree of protection under unfair dismissal laws and crime prevention laws.
ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS	No	No	Yes, Limited The Federal Council has recently proposed new provisions to allow whistleblowers to make a report to the authorities without breaching their duties to their employer. The report must be made to the employer first. It has also been proposed to protect whistleblowers from being held criminally liable for making a report.
CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?	No	Yes There may be financial penalties if the employer breaches provisions in a collective bargaining agreement. In addition, if a whistleblower reports to his employer knowledge of criminal activity, the company may be liable to pay a fine if crimes are committed within the company's business activity and the company could have prevented these crimes.	No
ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?	No	No	No

linklaters.com

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2019

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.