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Statement on the transposition of the whistle-blower protection directive: advantages of a group solution

Companies all over the EU are currently doing their preparations to be fully compliant with 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 Union law (best known as *whistle-blower protection directive*).

European companies welcomed the directive and its objectives and are largely making the steps to implement its obligations even if most of the national transposition acts have not yet been tabled nor adopted. In many cases, companies are not starting from zero as they have developed throughout the years well-functioning centralized whistle-blower channels.

With Member States gradually coming forward with their transposition measures, it is important to ensure that companies retain some flexibility in developing their whistle-blower reporting channels efficiently whilst following the spirit and objectives of the directive. The latter does point to such flexibility by determining that internal reporting procedures should enable legal entities in the private sector to receive and investigate in full confidentiality reports by the workers of the entity and of its subsidiaries or affiliates ('the group') [see, recital 55 of the directive].

It is also important to have a harmonised approach to avoid internal market barriers which will not be useful neither for the company nor for the whistle-blower.

There is a growing concern from many companies across Member States regarding a too restrictive interpretation of the directive to the extent that it prevents group solutions for entities/companies with 250+ workers, namely that one of the legal entities in the group, e.g. one which runs group function, may operate a uniform whistleblowing scheme with reporting channels on behalf of all group companies/legal entities.

There are multiple advantages to having a single entity that manages the channels of notification and management of complaints within groups of affiliated companies:

- ✓ More coherence when dealing with whistle-blower disclosures (application of common standards). Avoids fragmentation of approaches within the group, helps identifying systematic misconducts across a group and prevents a reoccurrence. This would also help in fostering the general improvement of groupwide compliance management systems and measures.
- ✓ The whistle-blower protection can be guaranteed at a high level throughout the group. An independent department could safeguard the confidentiality of the whistle-blower's

identity better than a small department at the level of the affiliated company, where the whistle-blower runs the risk of being identified.

- ✓ Allows synergies of centralized group solution to build trust in the process, to harmonise trainings and awareness and thus to ensure the effectiveness of the channel.
- ✓ For the whistle-blower, the advantage of a centralised group solution is that a single report is all that is required – even if a number of affiliated companies, e. g. subsidiaries, are involved. Especially in a corporate group, collaboration across various affiliated companies is the norm, and this is why reports of irregularities often involve different companies.
- ✓ Allows complaints to be resolved by a specialized person or department in the group that has the required expertise as well as know-how and is independent and autonomous from the indicated affiliated company(ies) in the group (e.g. who is not influenced or has personal ties with managers or senior positions in the affiliated company).
- ✓ Should the allegations of wrongdoing extend to the management of the affiliated company, a centralized entity would be better able to initiate and enforce any measures that might be necessary (including disciplinary ones), both within and against the affiliated company in question. This would also lessen chances of an affiliated company to cover up wrongdoings.
- ✓ Allows the integration of group entities that have less than 50 employees which are not in the scope of the directive and would not have the sufficient resources to implement their own individual channels.
- ✓ Group compliance functions are better placed to deal with differences in national legislation which will likely occur during the transposition of this directive across all the 27 Member States. A group solution can serve to align or even go beyond the highest denominator.
- ✓ It helps European corporations with global dimension to be in line with legal requirements and compliance expectations from other jurisdictions. For example, for US authorities it is essential that large corporations are able to effectively use central compliance resources to fully address and investigate whistle-blower reports.

The fact that each legal entity/company under the scope of the directive is required to have its own internal reporting channel and procedure is fully acknowledged. Additionally, the directive should be read as allowing for groups a certain discretion on how they implement, organise and operate (in the most efficient manner) their reporting and follow-up departments within the group (for entities with +250 employees), including operating its uniform whistle-blower system under one group entity (which manages notifications and complaints received from the channels of all the group's affiliated companies). This is, as argued above, in the interest of the whistle-blower as well as the company and better suited to achieving the objectives of the directive in the best possible way.

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