

Federal Association of Corporate Lawyers in Germany

Comments on Public Consultation on the Evaluation of the Directive on the Protection of Whistleblowers (EU 2019/1937)

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I. General Remarks on Directive EU 2019/1937

BUJ strongly supports a substantial protection of persons reporting violations of the law (whistleblowers). Courageous persons pointing to illegal incidents in order to avoid both financial and reputational damages arising therefrom are important. Consequently, mechanisms and processes to protect whistleblowers have been a longstanding and essential part of Corporate Compliance Management Systems. The EU-Directive "on the protection of persons who report breaches of Union law" (EU 2019/1937) is an important contribution here. The forthcoming evaluation of the Directive would be an excellent opportunity to align it with other regulatory initiatives, improve its usability and enhance legal certainty.

II. Suggestions for Improvements

1. Scope of Application

Against the background of current regulatory initiatives aiming to reduce burdens and to cut red tape especially for small and medium size companies (SMEs), we believe raising the threshold for establishing whistleblower schemes in private companies should be considered. The present threshold of 50 employees seems low and imposes costly procedures for receiving and following up on reports on smaller companies with scarce organisational resources. Consequently, an increase of the application threshold from 50 to 250 employees seems appropriate.

2. Explicitly provide for Shared Schemes for Groups of Companies

The Directive should explicitly mention the possibility to appoint a single entity that is responsible for managing the channels of notification and the management of complaints throughout an entire group of affiliated companies. This entity could either be a department in the parent company or a separate group entity. A group-wide or centralized solution shows clear benefits:

- It creates more coherence when dealing with whistleblower disclosures (application of common approaches and standards). A fragmentation of approaches within the group can be avoided.
- The whistleblower protection can be guaranteed at a high level throughout the group. An independent department may be more capable of safeguarding the confidentiality of the whistleblower's identity than a department at the level of an affiliated small(er) company, where the whistleblower runs the risk of being identified.
- For the whistleblower, the advantage of a centralized group solution is that a single report is all that is required – even if numerous affiliated companies within the group are involved in the alleged misconduct.
- 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.

We would much appreciate if our remarks and suggestions were taken into consideration and remain available in case of questions or for further explanations.