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## Newsflash

16 November 2022

### Protection of persons who report breaches of Union law – Transposition of Directive (EU) 2019/1937 (EU Whistleblowing Directive)

On 10 November 2022, Greece transposed the Directive (EU) 2019/1937 on the protection of persons reporting breaches of Union law under Law 4990/2022. The object of the said law is the establishment of a system of internal and external reporting of breaches of Union law, the protection of persons who report said breaches, the organization of the procedure for submitting, receiving and monitoring the reports and the penalties imposed. In particular:

#### Who is considered a Whistleblower?

According to the new law, reporting person means a natural person who internally or externally reports or publicly discloses information on breaches acquired in the context of his or her work-related activities.

Reporting persons can be:

- employees with full or part-time permanent or seasonal employment,
- self-employed or consultants or home workers,
- shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees,
- any persons working under the supervision and direction of contractors, subcontractors and suppliers.

Additionally, a reporting person can be anyone who reports or publicly discloses information on breaches acquired in a work-based relationship which has since ended as well as a person whose work-based relationship is yet to begin in cases where information on breaches has been acquired during the recruitment process or other pre-contractual negotiations.

#### What is a breach?

Breaches means acts or omissions that are unlawful under Union Law or defeat the object or the purpose of

the rules in the Union. More specifically:

- breaches of Union law in the areas of public procurement, financial services, products and markets, and prevention of money laundering and terrorist financing, product safety and compliance, transport safety, environmental protection, radiation protection and nuclear safety, food safety and welfare, public health, consumer protection, privacy and personal data protection, and security of network and information systems,
- breaches affecting the financial interests of the Union,
- breaches relating to the internal market (competition and State aid rules, corporate tax).

However, the Law does not apply to reports of breaches of matters involving defence or security aspects.

Moreover, for the scope of reported breaches where reporting channels can be used, both Law 4808/2021 and business policies (in the form of Code of Conduct or otherwise) that may expand the context of the reported breaches should be taken into account.

#### Reporting channels: internal

##### Public sector

- Entities employing fifty (50) or more employees are required to appoint a Report Receiving and Monitoring Officer (“**Officer**”),
- For entities employing up to forty-nine (49) employees the duties of the Officer are exercised by the Integrity Advisor or the Officer of the supervising Ministry, as long as the position of Integrity Advisor has not been established,
- For the regional and local authorities (OTA) of first grade with a population of less than ten thousand (10,000) inhabitants or that employ up to forty-nine (49) employees, as well as for legal entities and businesses supervised by them, the responsibilities of the Officer are exercised by the Advisor of Integrity or the Officer, as long as the position of Integrity Advisor has not been established for the regional and local authority of second grade, to whose territorial jurisdiction the local and regional authority of first

grade belongs to.

Public sector entities must comply with the obligation to establish a complaint internal reporting channel within **six (6) months** from the entry into force of the law.

### Private sector

- Private sector entities with fifty (50) or more employees, regardless of the nature of their activities and the duration of employment of each of the employees within the year, shall appoint an Officer,
- Entities with less than fifty (50) employees may appoint an Officer,
- Private sector entities in the field of financial services, products and markets, transport and the environment, as well as entities that operate on the basis of a decision for approval of environmental terms, or whose activities may by their nature cause a risk to the environment and public health, are obliged to appoint an Officer regardless of the number of employees they employ.

Private sector entities with fifty (50) to two hundred and forty-nine (249) employees must comply with the obligation to establish an internal reporting channel **by December 17, 2023**, while entities with more than two hundred and fifty (250) **within six (6) months** from the entry into force of the law. In any case, they must inform the Labour Inspectorate or the relevant supervisory body within two (2) months of compliance.

### Reporting procedure

The internal report is submitted in writing, or orally, or through an electronic platform accessible to people with disabilities, which operates on the website of the public or private body. Verbal reporting can be done by telephone or other voice messaging systems, as well as through a personal meeting with the Officer within a reasonable time, upon request of the reporting party.

### Reporting channels: external

The competent authority for receiving, managing and monitoring external reports is the National Transparency Authority ("NTA"). Especially for violations of Articles 101 and 102 of the Treaty on the Functioning of the European Union, the Hellenic Competition Commission ("HCC") is designated as an external channel of report.

The report to the NTA and the HCC is submitted in writing or orally or via an electronic platform, also accessible to persons with disabilities. Verbal reporting can be done by telephone or other voice message systems, as well as through a personal meeting with a person designated by the NTA or the HCC within a reasonable time, at the request of the reporting party.

### Public disclosure

Public disclosure means the making of information on breaches available in the public domain. In order to have a right for protection, the reporting person must:

- have first submitted an internal report and externally to the NTA, or directly to the NTA, but no appropriate action was taken in response to the report,
- or alternatively the person has reasonable grounds to

believe that the breach may constitute a risk to the public interest, or where there is an emergency or risk of irreversible harm, or, in the case of a report to the E.A.D., there is a risk of retaliation, or there is little prospect of effectively dealing with the breach, due to the particular circumstances of the case.

### Measures for protection

Persons who report breaches have no liability in respect of the acquisition of or access to the information, which is reported or publicly disclosed, provided that such acquisition or access did not constitute a self-standing criminal offence. At the same time, if the report or public disclosure constitutes a criminal, disciplinary, administrative offence or misconduct for the reporting person, any criminal, disciplinary, administrative or civil proceeding brought against the reporting person for the reported breach shall be suspended until the completion of the investigation of the report.

Personal data and any information that leads, directly or indirectly, to the identification of the reporting person is not disclosed to anyone other than the authorized staff members who are competent to receive, or monitor the breaches, unless the reporting person consents. Their identity and any other information can only be disclosed in the cases required by EU or national law, in the context of investigations by competent authorities or in the context of legal proceedings, and if this is necessary or to ensure the defense rights of the person in question. In any case, disclosure is made after prior written notification of the reporting person, unless such notification would undermine investigations or legal proceedings.

### Personal data protection

**Any processing** of personal data carried out in the framework of the reporting system complies with the **General Regulation (EU) 2016/679 on Data Protection and Law 4624/2019**.

However, **as long as** the conditions are met and as long as the necessary guarantees are taken to protect the personal data of the persons involved as provided for in the law, the following **exceptions** to the application of the GDPR may apply:

- the controller may not provide relevant information about the processing of personal data to the data subjects (to the reported and to any involved third party),
- the controller may not satisfy data subjects' rights of access, rectification, deletion, restriction, opposition and not be subject to a decision made solely on the basis of automated processing, including profiling,
- the controller may not make an announcement to the data subjects in the event of a security incident but inform the Personal Data Protection Authority accordingly.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.