



Implementation of the
whistleblowing bill of 16 May 2023
in the insurance sector

« WHISTLEBOWING LAW / WL »

21/03/2024
Presentation ALJB – AIDA Luxembourg

CAA COMMISSARIAT
AUX ASSURANCES

Two Step Approach

- Treatment of whistleblowing reports by the CAA as competent authority (external reporting channel)
- Oversee compliance with the WL on a regular basis and draw further conclusions as to the existence of breaches, their remediation or applicable sanctions.

1. Treatment of external reports – First Step

- Specific national provisions
- External reporting channel
- Examples of whistleblowing
- Objectives and follow-up on reports

2. Measures of control – Second Step

- Legal scope of control by the CAA
- Potentially via auditors' certification (in «separate report» / rapport distinct)
- Main concerns & Sanctions powers

1. Treatment of external reports by the CAA – First Step

– Specific national provisions

Directive (EU) 2019/1937 on the protection of persons who report breaches of Union Law refers to the sector-specific Union acts listed in Part II of the Annex (inter alia IDD – Directive (EU) 2016/97).

Preexisting specific rules on the reporting of breaches, such as:

In Art. 8-3 of the modified law on the fight against money laundering and terrorist financing (12 November 2004)

in Art. 4, o) of the modified law on the insurance sector (7 December 2015):

« The CAA shall establish effective mechanisms to enable and encourage any reporting of potential or actual infringements of the laws and regulations listed in Articles 303, paragraph 1, and 304 or other conduct referred to in Articles 303, paragraph 1, and 304 and the measures taken to enforce them.

The mechanisms referred to in paragraph 1 shall include at least:

1. **Specific procedures** for the receipt of reports and their follow-up;
2. **Appropriate protection** against retaliation, discrimination or other types of unfair treatment, for the staff of persons under the supervision of the CAA and, where possible, for other persons under the supervision of the CAA and, where possible, for other persons who report infringements committed by or within such persons;
3. the **protection of personal data**, both for the person reporting the infringement and for the natural person allegedly responsible for them;
4. clear rules guaranteeing in all cases **confidentiality** to the person reporting infringements committed by or within persons under the provision of the CAA, unless disclosure of information is required by Luxembourg law in the context of further investigation or subsequent judicial proceedings.

1. Treatment of external reports by the CAA – First Step

_ External reporting channel

The Directive and its national transposition introduce **more granularity** in the treatment and follow-up of external reports by competent authorities

Adaptations of CAA **website, reporting forms** and **internal procedures:**

√ alteration of **scope**

√ **definitions and conditions** for protection (incl. confidentiality & professional secrecy rules)

E.g.: reporting person who acquired information on breaches in a “work-related context”, i.e. even contractors, suppliers or ended work-based relationship...

√ **transfer** to other competent authority

√ **deadlines** (acknowledgement of receipt, follow-up,...)

√ **record keeping, confidentiality**, etc.

_ Examples

Broad range of whistleblowing cases

1. Treatment of external reports by the CAA – First Step

_ Objectives and Mission

- √ Systematic involvement of the CAA's Executive Committee
- √ Verify the sector-specific competence of the CAA
- √ Give acknowledgement of receipt to the whistleblower within allocated time frame
- √ Analyze of the reports (breaches)
- √ Enquire further information from the targeted entity/ individual
- √ Take the necessary measures according to the CAA missions defined by law
- √ Meet our obligation to follow-up on this reports within the limits of professional secrecy obligations

2. Measures of Control – Second Step

- Legal scope of control according to Art. 6 paragraph 7 of the WL

The CAA as competent authority:

- Verifies the **implementation of internal reporting channels** within the private legal entities under its supervision;
- Asks for any necessary information in order to **assess the compliance of internal reporting channels with the whistleblowing law.**

▶ broad scope of control according to the whistleblowing law

... Without prejudice to the compliance of such channels in the context of specific national provisions (such as the fight against money laundering and terrorist financing).

According to Art.6 paragraph 6 of the WL: the provisions of the WL shall be applicable to the extent that a matter is not mandatorily ruled by in specific regulation (e.g. Art 35 of Insurance Distribution Directive)

2. Measures of Control – Second Step

- **Regular controls** (fulfilment on the basis of the « Rapport Distinct / Separate Report », i.e. specific information to be certified by the external auditor « Réviseur d'entreprise agréé » currently under analysis).
- **On the spot controls** (on site or documentary inspections)
- Main areas of focus (without prejudice to further issues which seem appropriate in the case at stake):
 - Operative internal reporting channel

Existence, accessibility and information about this channel to the group of potential whistleblowers defined by the WL, etc.

 - Compliant monitoring of the channel

Person(s)/ department in charge, impartial, etc.

 - Internal whistleblowing procedure

 - Follow-up on reports

2. Measures of Control – Second Step

- **Pecuniary sanction's power** in respect of any compliance issue with the WL (see also Art 18 paragraph 2 of the WL / re. « First Step ») in case legal entities and/or natural persons:
 - hinder or attempt to hinder reporting
 - refuse to provide the requested information to the CAA
 - breach the duty of maintaining the confidentiality devoted to reporting persons
 - refuse to remediate the breach
 - violate the obligation to set-up an internal report channel and adequate procedures

Possibility of an administrative appeal (« recours en réformation ») against the sanction

- **On the spot controls** (on site or documentary inspections)
 - sanctions, coercive measures and appeals

infringements of the laws and regulations listed in Articles 303, paragraph 1, and 304 or other conduct referred to in Articles 303, paragraph 1, and 304 and the measures taken to enforce them;

non-compliance with specific rules of law, including but not limited to the fight against money laundering and terrorist financing.

11, rue Robert Stumper
L-2557 Luxembourg
T. +352 22 69 11-1

caa@caa.lu

www.caa.lu

The logo for CAA (Commissariat aux Assurances) features the letters 'CAA' in a stylized font. The 'C' is black with a red arc at the bottom left. The 'A' is black with a blue arc at the top right. The 'A' is followed by the text 'COMMISSARIAT AUX ASSURANCES' in a bold, black, sans-serif font.

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