

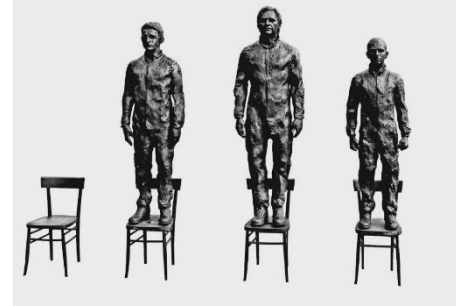


# Whistleblowers' protection



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Office des signalements

# “Blowing the whistle” in the public interest



2015, Davide Dormino, Sculpture itinérante, « Anything To Say ? »

Illustrations: Wikileaks (Iran War logs, Guantanamo Files, NSA world spying, ...) “China cables”, Pandora Papers, Swiss Leaks, Luxleaks, Medicoleaks, ...

<i>Nature des faits</i>	<i>Qualification(s) pénale(s)</i>
<i>Faits de consultation et d'appropriation illicites de données</i>	<ul style="list-style-type: none"> <li>▪ <i>vol domestique, subsidiairement vol (article 464, sinon article 461 du Code pénal),</i></li> <li>▪ <i>infractions aux articles 509-1 à 509-4 du Code pénal,</i></li> </ul>
<i>Faits de révélation de données en violation d'un secret protégé par la loi</i>	<ul style="list-style-type: none"> <li>▪ <i>violation de secrets d'affaires (article 309 du Code pénal),</i></li> <li>▪ <i>violation du secret professionnel (article 458 du Code pénal, article 22 de la loi du 18 décembre 2009 sur la profession de l'audit et article 6 de la loi du 10 juin 1999 sur l'expertise comptable),</i></li> </ul>
<i>Faits de détention de données ayant fait l'objet d'une appropriation illicite et/ou d'une révélation en violation d'un secret protégé par la loi</i>	<i>blanchiment-détention (article 506-1 du Code pénal)</i>

Prosecutor's office conclusions against M. Deltour (Luxleaks)



Freedom of expression  
(art. 10 ECHR)

professional secrecy  
Legal or conventional provisions

Extensive jurisprudence and international texts  
and instruments

Guja v. Moldova [GC], 12 February 2008, n° 14277/04

Heinisch v. Germany, 21 July 2011, n° 28274/08

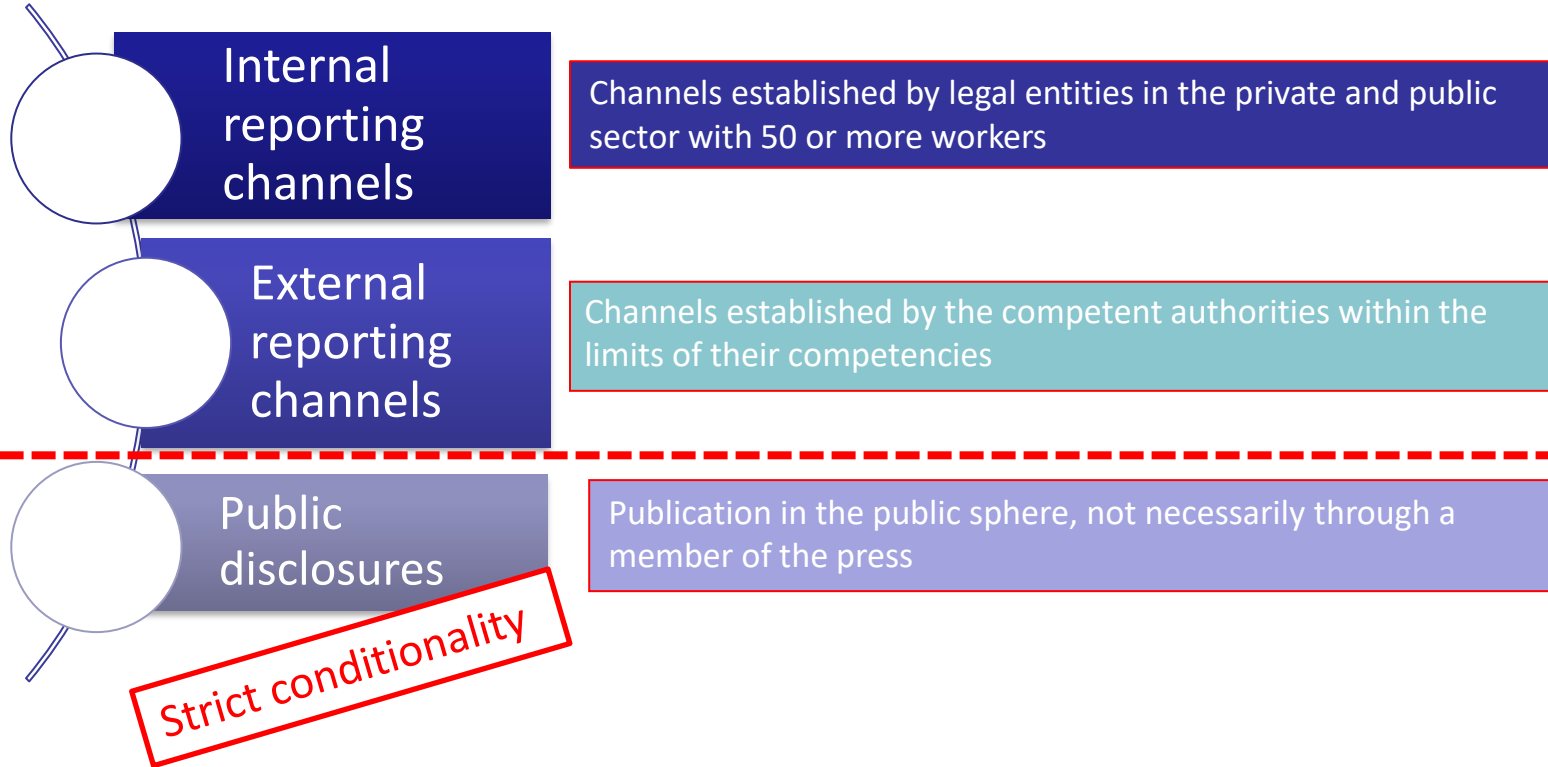
**Halet v. Luxemburg, [GC], 14 February 2023, n° 21884/18**

Sectorial provisions (AML, corruption, ...)

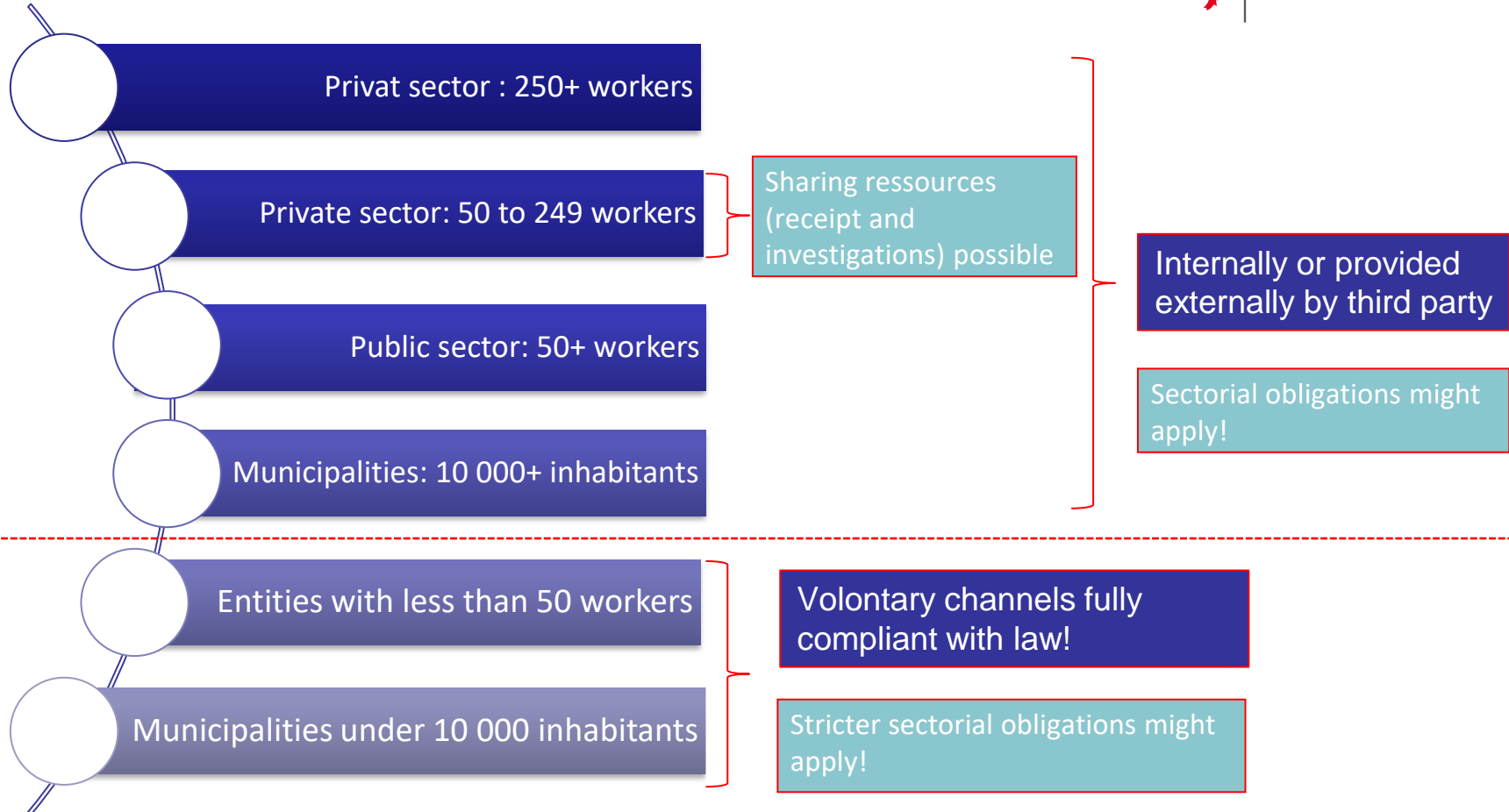
EU Directive 2019/1937

**Law of 16 May 2023**

# Which channels?



# Internal reporting channels: Which entities?





- Consult with data protection officer (DPO) on communication and IT systems with due regard to data protection concerns (special focus: confidentiality)
- Consultation or co-decision by staff delegation
- Adopt and communicate internal whistleblowing procedure (personnel and contractors)
- Designate person or department (due regard to requirement of impartiality) in charge of the reporting channel and insure cooperation of other departments (diligent follow-up)



- **Broad definition of work-based relationship:**
  - Employees (current, past and future(candidates)), consultants, shareholders, interns, contractors, ...
- Broad definition of “breaches”: Acts or omissions
  - That are **unlawful** under provisions of national legislation and of European legislation with direct effect (mainly regulations)
  - That **defeat the object or the purpose** of those rules (notably abuse of process (“abus de droit”))
- Breaches that have occurred or are **very likely to occur**, including attempts to conceal such breaches
- Exceptions apply (e.g. professional secrecy of lawyers)
- **Information on breaches acquired in a work-based relationship**
- Information, including **reasonable suspicions** (“reasonable grounds to believe ... at the time of reporting”)

# Diligent follow-up



## Confidentiality

- Protect the identity of the author from direct and indirect identification (except consent)
- Protect the identify of the involved persons (persons referred to in the report)
- Deletion of manifestly irrelevant personal data

### • Correct handling of evidence

- Precise, dated and signed minutes and reports
- Collect written witness statements
- Secure documents

Acknowledgment  
of receipt

7 days

Inadmissible report: inform the author about adequate procedures or department (e.g. HR, antiharassment procedure)

Accuracy of the  
allegations

- Follow-up questions to the whistleblower
- Review of documents
  - Authenticity
  - Pertinence
- Preliminary internal investigations

Feedback within 3 months

- Internal inquiry or investigation
- Filing criminal complaints
- Disciplinary measures
- Civil action (recovery of funds)
- Actions en recouvrement
- Clôture de la procédure

Adequately  
addressing the  
breach





- Essential *ex-ante* measure to prevent retaliation: confidentiality
- Prohibition or retaliation
- Remedial measures against retaliation:
  - nullity action within 15 days
  - Remedies (compensation)
  - Reversal of the burden of proof
- No criminal or civil liability of any kind as a result of reports or public disclosures
- Support measures by whistleblowers' office (mainly guidance on adequate procedures and awareness raising activities)
  
- Protection extended to related third parties
  - companies or persons linked to whistleblower

# Institutional framework



- 22 competent authorities
- Whistleblowers' office (office des signalements)
- Prosecutor's office

Commission de surveillance du secteur financier	Commissariat aux assurances	Autorité de la concurrence	Administration de l'enregistrement, des domaines et de la TVA	Inspection du travail et des mines	Commission nationale pour la protection des données
Centre pour l'égalité de traitement	Médiateur dans le cadre de sa mission de contrôle externe des lieux où se trouvent des personnes privées de liberté	Ombudsman fir Kanner a Jugendlecher	Institut luxembourgeois de régulation	Autorité luxembourgeoise indépendante de l'audiovisuel	Ordre des avocats du Barreau de Luxembourg et l'Ordre des avocats du Barreau de Diekirch
Chambre des notaires	Collège médical	Administration de la nature et des forêts	Administration de la gestion de l'eau	Administration de la navigation aérienne	Service national du Médiateur de la consommation
	Ordre des architectes et des ingénieurs-conseils	Ordre des experts-comptables	Institut des réviseurs d'entreprises	Administration des contributions directes	



- **Within its competencies**, each authority has the duty to:
  - Monitoring the compliance with the law, notably the setting up of internal reporting channels by legal entities in the private sector
  - Receiving and following up on external reports
  - Imposing administrative fines in relation to infringements (some authorities, through the whistleblowers' office)



## *Awareness raising*

- Informing and helping potential whistleblowers' by identifying most appropriate procedures and channels
- Awareness raising
- Annual report with statistics of external reports
- Adopting recommendations on the application of the law

## *Monitoring compliance*

- Collection and transmission to the relevant competent authority of information on infringement
- Administrative fines (files transmitted by 11 competent authorities)
- General duties to monitor compliance for the law (notably: public sector)



- Administrative fines (1.500 euros to 250.000 euros) by competent authorities or the whistleblowers' office for the following infringements by natural or legal person:
  - Hindering or attempting to hinder reporting;
  - Refusing to cooperate with competent authorities (refusal to provide information, or provide false or incomplete information on reporting channels or breach);
  - Breaching confidentiality of the identity of reporting persons;
  - Refusing to remedy the identified breach;
  - Failing to establish reporting channels.
- Heftier fines possible for recurring infringements
- Civil and criminal liability for authors of retaliation
- liability for knowingly reporting or publicly disclosing false informations:
  - Criminal liability (emprisonnement (8 days to 3 months), financial sanction up 50.000 euros)
  - Civil liability (compensation for damages resulting from such false reporting)
- Criminal liability for autonomous criminal offenses (e.g. intrusion, hacking, ...)



## ➤ Follow-up questions?

→ Publication on the website of the Ministry of Justice:

<https://mj.gouvernement.lu/en/dossiers/2023/lanceurs-d-alerte.html>

→ Video

→ Flyers (French, English, German)

→ Contact the Office for whistleblowers (Office des signalements)

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