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FINANCIAL LAW NEWSLETTER

New official procedures for whistleblowing in the financial services sector – Have you put in place your internal whistleblowing procedure yet?

“All persons or institutions licensed by or registered with the FSMA or the NBB must also implement appropriate internal procedures for the reporting of actual or potential infringements”

Belgian law requires companies and institutions that are licensed by or registered with the Financial Services and Markets Authority (“FSMA”) or the National Bank of Belgium (“NBB”) to set up an internal procedure for reporting actual or potential infringements of any of the rules monitored by the FSMA (the internal “whistleblowing scheme”).

This obligation exists besides the newly created direct whistleblowing line to the FSMA.

1. Direct whistleblowing line to the FSMA

The law provides that any whistleblower can directly alert the FSMA of any infringements of the rules that it monitors¹, thereby assuring inter

¹ New art. 69bis of the Law of 2 August 2002, relating to surveillance of the financial sector and financial services, as introduced by the Law of 31 July 2017 modifying the Law of 2 August 2002.

alia that the FSMA shall keep the identity of the whistleblower confidential and that whistleblowers acting in good faith shall not be subject to civil, criminal or professional prosecutions, reprisals, discrimination or other unfair treatment.

To that effect, the FSMA issued procedural rules for handling reports received directly from whistleblowers². This FSMA regulation provides inter alia:

- that the FSMA will assign and appoint specialist personnel within its own staff for handling reports by whistleblowers;
- that the whistleblowing can be done on an anonymous basis;
- four communication channels for the receipt and the follow-up of the whistleblowers’ reporting, one of which is an application available on the website of the FSMA and called the “Whistleblowers’ point of contact”³.

2. Internal whistleblowing procedure to be put in place

All persons or institutions licensed by or registered with the FSMA or the NBB must implement appropriate internal procedures for the reporting of actual or potential infringements of any of the rules monitored by the FSMA⁴.

The law does not specify how these internal procedures have to be organized.

² Regulation of the FSMA of 5 September 2017 establishing the procedures for handling reports by whistleblowers, as published by Royal Decree of 24 September 2017 in the official Belgian journal of 28 September 2017.

³ <https://whistleblowing.fsma.be>

⁴ New art. 69ter of the Law of 2 August 2002, relating to surveillance of the financial sector and financial services.



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However, it is clear that it makes no sense to organize internal procedures that expose the employee, supplier or customer to retaliation by the entity receiving the complaint, or that are not effectively followed up. Therefore, it is recommended that anonymous whistleblowing is facilitated.

In addition, the internal procedures must take into account the imperative rules of applicable labour and privacy law.

In the absence of an internal whistleblowing procedure, the FSMA may impose administrative sanctions (up to 2,5 million EUR) or measures on the company or the institution that is in default to comply with this requirement.

3. Protection of whistleblowers

From an employment point of view, employees reporting a potential or real infringement, either to the regulator or to their employer, benefit from a strong legal protection against retaliation, discrimination or other types of unfair treatment within their employment. Said employees can also claim the right to be reinstated in their job in case of dismissal or opt for financial compensation equal to 6 months salary.

4. General fraud prevention

Financial services providers can expand their internal procedures to encompass and facilitate anonymous whistleblowing concerning all sorts of non-compliance or suspicion of fraud.

Also other companies and institutions should consider to follow this most effective fraud prevention trend and benefit from an affordable outsourced private anonymous whistleblowing tool that has recently been developed to cater the needs of the financial sector.

You are kindly invited to register for a free presentation of the Whistleblowing tool organized by our firm and Ebben Academy on 5 December 2017 in central Brussels and again in January 2018 in Diegem, from midday until 2 P.M. Please mail to contact@odc.law to let us know if you wish to attend.

If you have any questions concerning this Newsletter or want to organize your company's whistleblowing procedures, please reach out to your regular firm contact or the authors.

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