

# Global Guide to Whistleblowing Programs 2016



## **WORLD LAW GROUP GLOBAL GUIDE TO WHISTLEBLOWING PROGRAMS, 2016**

Please note that this guide provides general information only. Its purpose is to provide a brief overview of legislation governing whistleblowing programs in each jurisdiction covered. This information is not comprehensive and is not intended as professional or legal advice, generally or in a given situation. This guide is an outline of country-specific obligations, which may change. Facts and issues vary by case. Legal counsel and advice should routinely be obtained, including locally for any particular jurisdiction. Please consult your own counsel.

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## I. INTRODUCTION

Companies acting in a global environment with subsidiaries and businesses across a large number of jurisdictions face a daunting task: establishing compliance guidelines and whistleblowing reporting schemes that are both effective and consistent across the entire organization and which, at the same time, observe applicable data protection, privacy and labour laws in many countries. The aim of this publication is to provide a dedicated resource on this subject, distilling the experience of numerous World Law Group (“WLG”) firms into a single reference.

In an environment where adherence to anti-corruption, anti-bribery, fraud, and money-laundering laws is increasingly important, the structuring of whistleblowing programs has become more complex and the subject of regulation. Some laws, like the Sarbanes Oxley Act (“SOX”) in the United States, require such reporting mechanisms, while others, such as the Foreign Corrupt Practices Act (“FCPA”) and Dodd Frank Act in the U.S., and the United Kingdom’s Bribery Act, encourage internal reporting programs of this sort.

A SOX hotline procedure for European operations and separate country notices for employees, translated into local languages, are employed by some multinational companies. These are usually done in a manner so as not to disturb the underlying code of conduct or business ethics. Third-party hotline providers help with the solution but companies also have additional, independent obligations.

The aim of this publication is to make the understanding and, we hope, the execution of that process easier. Our goal, accordingly, is to facilitate a framework for analyzing and constructing multinational or global whistleblowing programs, with an eye towards consistency, where possible, and adherence to local law. Whether developments like the new EU General Data Protection Regulation, which is to enter into force in 2018, will simplify this process, remain to be seen.

This guide focuses on relevant laws around the world as they stand in mid-2016. However, change in this area is constant so we encourage you to consult additional references.

We hope you find this guide useful.

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### **Note regarding European Law and Privacy Shield**

Please be aware that we have added a new section on the European Union. In the future, personal data protection law in Europe will be harmonized. As of 2018, the General Data Protection Regulation will replace the current European Data Protection Directive (and the implementing national laws). This is referenced in the individual EU country chapters of this guide.

Also, the new Privacy Shield, replacing the Safe Harbour for personal data transfers from EU and EEA countries (and eventually Switzerland) to the US, has now been finalized and approved. It will go into effect August 1, 2016 for new applications. Any discussion of the implications and mechanics of the Privacy Shield for whistleblowing schemes is beyond the scope of this publication and will have to wait for a later day.

### **Acknowledgments**

This guide would not have been possible without the extraordinary contributions of many lawyers and others from a number of World Law Group member firms. Several individuals deserve special recognition for the painstaking effort and careful attention that such a global publication requires. For this edition, Sarah Haghdoost, a Senior Associate at CMS Germany in Munich, worked tirelessly in the compilation and organization of the various country contributions of the many WLG firms. Julie Engbloom, a partner in Lane Powell PC in Portland, Oregon, along with attorneys Laura L. Richardson, Cozette Tran-Caffee and Hans N. Huggler in that firm handled the legal review.

Shelley Boyes, the World Law Group's Director of Marketing & Communications, kept us on track (a not easy task) and managed final proofing, copy-editing and production.

The World Law Group is exceedingly grateful for the truly hard work, fine efforts and determination of all of these individuals and firms in helping us see this project through to conclusion.



## II. ABOUT THE WORLD LAW GROUP

The World Law Group is a network of 54 leading independent law firms with more than 350 offices in major commercial centres worldwide. WLG member firms comprise approximately 18,000 lawyers working in a comprehensive range of practice and industry specialties. Clients can access local knowledge and seamless multinational service via a single call to any World Law Group member firm.

A directory of all WLG member firms and their respective Key Contact Partners is available at [www.theworldlawgroup.com](http://www.theworldlawgroup.com). If jurisdictions relevant to your organization are not included in this guide, WLG members can usually provide contacts for those purposes.

For more information, visit [www.theworldlawgroup.com](http://www.theworldlawgroup.com).

### About the WLG Privacy & Data Protection Group

The World Law Group's Privacy & Data Protection Group is made up of lawyers in the WLG's member firms worldwide who have data protection, privacy and related compliance work as a focus of their practice, both in their countries and globally. The group's goal is to enhance the provision of relevant and seamless client services, including advising on cross-border data transfers, privacy risk assessments and data breach services to multinational entities, and to develop proactive compliance procedures and techniques in this increasingly demanding field.

Group members from around the world meet by teleconference and at many World Law Group semi-annual conferences to exchange information about emerging privacy issues and challenges for multinational and local country clients, and to work together on various projects. Group members have collaborated on several noteworthy publications, both online and in print, and have organized numerous webinars and other information events for members and clients.

Members have also recently collaborated to produce an expanded and updated second edition of the well-regarded *WLG Global Guide to Data Breach Notifications*, which can be downloaded from its companion website, [www.globaldatabreachguide.com](http://www.globaldatabreachguide.com).



## 18. FRANCE<sup>17</sup>

### 18.1 Applicable law and/or data protection guidelines?

No, France has no specific whistleblower protection laws in place.

When whistleblowing programs imply the processing of personal data, they are subject to the provisions of the French Data Protection Act.

In November 2005, the Commission Nationale de l'Informatique et des Libertés (French Data Protection Authority or hereinafter “CNIL”) issued guidelines on the implementation of whistleblowing programs in compliance with the French Data Protection Act.

CNIL also published a decision (Single Authorization AU 004), that authorizes the processing of personal data implemented through a whistleblowing program that meets the requirements set out in said decision, which is available in French at [www.cnil.fr/documentation/deliberations/deliberation/delib/83/](http://www.cnil.fr/documentation/deliberations/deliberation/delib/83/).

### 18.2 Is an English translation available?

Yes. An official translation of the French Data Protection Act is available: [www.cnil.fr/fileadmin/documents/en/Act78-17VA.pdf](http://www.cnil.fr/fileadmin/documents/en/Act78-17VA.pdf)

### 18.3 Is prior notification or approval required?

Yes. Before setting up a whistleblower program, it will be necessary either to:

- Make a declaration of conformity to the Single Authorization AU 004 (simplified declaration process) if the company wishes to implement a whistleblowing program that matches the requirements set forth in the Single Authorization, or
- Apply for prior approval (standard authorization process) if the company wishes to implement a whistleblowing program that does not precisely match these requirements.

### 18.4 Can notification or approval be filed online?

Yes.

### 18.5 Generally, how long does it take to get approval?

Usually, this takes less than three months. In the event of a simplified declaration process (through the Single Authorization procedure), the acknowledgement of filing by the CNIL shall be issued within a few days or a week.

In the event of a standard authorization process, the CNIL shall issue a decision within two months from the request for approval.

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<sup>17</sup> France is a member state of the European Union. If you are interested in the EU law requirements, please refer to the section on the European Union.



### 18.6 Contact information for Data Protection Authority?

Name:	Commission nationale de l'informatique et des libertés
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Email:	See website
Website:	<a href="http://www.cnil.fr">www.cnil.fr</a>

### 18.7 What is the scope of the reporting permitted?

The whistleblowing programs permitted under the Single Authorization from the CNIL are those limited in scope to facts regarding the following fields, as long as the use of the data relates to the data controller's legal obligation or to its legitimate interests in these fields:

- Finance, accounting, banking (for financial institutions) and the fight against corruption;
- Antitrust law;
- Harassment and to address discrimination;
- Health, hygiene and security in the workplace; and
- Protection of the environment.

Whistleblowing programs not limited to this scope (e.g., those that include intellectual property or any violation in general that could be detrimental to the company or to the "moral or physical integrity of its employees") will not benefit from the simplified declaration process and will be reviewed by the CNIL on a case-by-case basis as to the legitimacy of the program's purposes and proportionality.

### 18.8 Are there limits as to who can make a report under a whistleblowing program? (E.g., only managers and executives? Other employees? Suppliers?)

No, there are no limits on who can make a report through the whistleblowing program. However, in the preamble to the Single Authorization, the CNIL defines whistleblowing programs as systems made available to employees. The whistleblowing programs have to define who is entitled to make a report.

### 18.9 Are there limits as to who can be a subject of a report?

No. However, in accordance with the principle of proportionality, the categories of persons who can be the subject of reporting must be precisely defined in the whistleblowing program.





### 18.10 Is anonymous reporting permitted?

Yes, anonymous reporting is tolerated as long as it is not actively encouraged by the company.

As an exception, an anonymous report may be processed provided that (i) the seriousness of the facts involved has been proven and the factual evidence is sufficiently detailed, and (ii) specific precautions are taken (e.g., prior assessment by the first recipient of the information that it is appropriate to follow up on the report within the whistleblowing system process).

### 18.11 Are there restrictions on the transfer of data in a whistleblowing programs?

Yes. If, in a whistleblowing program, personal data is transferred outside of the European Union, the transfer has to comply with the Data Protection Act obligations regarding international data transfers. The formal requirements vary according to the country, the designation of a Data Privacy Officer (“Correspondants informatique et libertés” or “CIL”) and the legal framework of the transfer.

Pursuant to the Single Authorization, such obligations under the Data Protection Act are fulfilled when:

- The recipient has entered into a transfer contract containing the standard clauses issued by the European Commission and available on the CNIL website; or
- The group to which the affected entities belong has adopted binding corporate rules which the CNIL has previously acknowledged as guaranteeing an adequate level of protection.

For these cases, and provided that the processing from which the transfer comes, complies with all the Single Authorization requirements, this also serves as authorization to transfer data.

### 18.12 Is the consent of employees required for either a whistleblower program or for the transfer of data in a whistleblowing program?

No, but employees must be informed collectively and individually of the implementation of a whistleblower program and of the transfer of their personal data.

### 18.13 Is the consent of, or consultation with, a Works Council, union or other employee representative group required?

Yes, consultation with the Works Council is required. The Works Council needs to be informed and consulted on the “means and techniques that allow control of the employees’ activity” before it is implemented within the company.

Consultation with the Committee for Hygiene, Safety and Working Conditions may also be required depending on the circumstances (e.g., the implementation of a whistleblowing program has the effect or object of controlling the employees’ activity, and as such could be considered as a modification of their Hygiene, Safety and Working Conditions within the meaning of the French Labour Code).



**18.14 Are there any specific computer or other security requirements, including the deletion of the reported information, for the whistleblower program?**

Yes. Data relating to a report found to be unsubstantiated by the entity in charge of processing such reports must be deleted immediately.

Data pertaining to a given report and reporting of facts giving rise to an investigation (or “verification”) must not be stored beyond two months, unless a disciplinary procedure or legal proceedings are initiated against the person incriminated in the report or the author of an abusive/false alert. In that case, data must be deleted at the end of the procedure/proceedings.

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