

AmCham Romania

# Whistleblowing Guidelines

# 2024

AmCham Romania warmly thanks contributors in the Corporate Governance Committee for their input on the Guidelines.

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# Executive Summary

*Whistleblowing is a crucial mechanism for uncovering wrongdoing within organizations and promoting transparency, integrity, and accountability. In today's complex business environment, establishing a robust whistleblowing policy is essential for companies to foster a culture of openness and ethical behavior.*

*This guidelines outline key considerations for companies in developing and implementing effective whistleblowing policies while providing support and protection for whistleblowers. By adhering to these guidelines, companies can mitigate risks, enhance corporate governance, and uphold their commitment to ethical conduct and compliance with laws and regulations. Moreover, it provides practical insights and best practices to support the implementation of whistleblowing policies that uphold integrity and compliance.*

*AmCham encourages all stakeholders to utilize this resource to strengthen our commitment to ethical conduct and governance.*

# Key Components of a Whistleblowing Program

All companies should design, approve at the highest governance level, communicate, and reinforce a **whistleblowing policy**.

The **key benefits** of a whistleblowing policy are:

- ❖ **Encourages transparency:** a whistleblowing policy promotes transparency within the organization by providing employees with a formal channel to report any wrongdoing or unethical behavior they observe;
- ❖ **Early detection of issues:** the opportunity to identify unethical behaviour and various types of internal fraud as the majority of internal fraud cases are uncovered following a tip-off;
- ❖ **Fosters a culture of integrity:** this results in reputation gains as the company shows it is committed to transparency and sends a strong message that the organization values integrity and ethical behavior. It encourages employees to uphold these values and reinforces a culture of accountability and trust;
- ❖ **Protects Whistleblowers:** a well-designed whistleblowing policy protects whistleblowers from retaliation, ensuring that employees feel safe and supported when reporting concerns. This protection can include confidentiality, non-retaliation clauses, and mechanisms for anonymous reporting;
- ❖ **Responsibility and good corporate citizenship:** all stakeholders (including suppliers, customers, shareholders, employees) have a mechanism through which they can report suspected wrongdoing;
- ❖ **Improves organizational governance:** by addressing issues raised through whistleblowing channels, organizations can improve their governance structures and internal controls, leading to more effective risk management and compliance. This enables the company to identify management override, reduce concerns, and eliminate frustration.

| Whistleblowing <b>is meant to</b> provide a means to report (examples):                                                                                                                                                                                                                                                                                                                                                                                        | Whistleblowing <b>is NOT meant to</b> provide a means to report (examples):                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>✓ a criminal offence</li> <li>✓ violations of laws and regulations</li> <li>✓ a miscarriage of justice</li> <li>✓ a health and safety risk that has not been addressed</li> <li>✓ an environmental risk</li> <li>✓ unethical behavior, management override of controls or gross non-compliance with policies and procedures</li> <li>✓ covering up of wrongdoing, collusion, or unfair competition practices</li> </ul> | <ul style="list-style-type: none"> <li>✗ personal grievances</li> <li>✗ HR-related matters which do not result from a violation of the labor laws</li> <li>✗ customer service, unless the complaints concern unethical behavior</li> </ul> |

## Issues to Report

These should be included, as examples, in the whistleblowing policy:

- active and passive corruption;
- theft, misuse, fraud and embezzlement;
- conflict of interest, including violation of insider rules and laws;
- violation of good practice / competition / tender laws;
- accepting or giving impermissible gifts;
- inaccurate / misleading financial reporting or other regulatory submissions;
- violation of health and safety laws, significant risks not managed;
- discrimination and employee harassment;
- violation of labor laws, data protection, compliance or other applicable laws and regulations;
- breach of confidentiality, trade of business secrets;
- gross incompliance with policies and procedure, management override of internal controls;
- retaliation against speaking up;
- any other law breaches.

## Recommendations for Organizations

All companies should implement a **whistleblowing program**, to enable effective reporting of wrongdoing.

This **program** should include:

- ❖ the whistleblowing policy / regulation (including the whistleblowing process, roles and responsibilities in relation to whistleblowing, and the monitoring and reporting mechanisms);
- ❖ easy-to-use reporting mechanisms such as:
  - a dedicated e-mail address (e.g. [reporting@abc.com](mailto:reporting@abc.com) / [compliance@abc.com](mailto:compliance@abc.com));
  - a dedicated online platform (such guarantee anonymity, confidentiality and multiple language availability);
  - a dedicated 24/7 hotline (this will come with costs therefore it could be considered by bigger companies, covering more geographies and time zones) – also must guarantee anonymity, confidentiality and multiple language availability;
- ❖ a designated person or department responsible for receiving the reports, following up on them, investigating and solving them reports (e.g., the Compliance Officer / another officer with sufficient independence and know-how);
- ❖ an awareness plan consisting of annual communication campaigns to all stakeholders, managed by the designated person/department (including trainings, mock examples of using the available reporting mechanisms and other communications activities).

# The Whistleblowing Policy

A whistleblowing policy should (examples):

- ❖ clearly define the scope of the regulation - ideally, the policy should apply to all stakeholders (employees, customers, suppliers, Board members, shareholders);
- ❖ clearly define the process to receive, store, investigate, report, and monitor tip-offs;
  - all tip-offs should be logged in a whistleblowing register, together with key information supporting analysis and statistics (e.g., date of reception, category, anonymous or not, whistleblower's contact details);
  - investigations should be performed by a person/department with sufficient authority, know-how, independence, and objectivity such as Security, Compliance, Internal Audit;
  - legal team or any other involved departments should be available to provide their technical support during investigation and consequence management phases;
  - the mandate of the investigation unit should be clearly defined, the unit should have unrestricted access to records and people (unless already covered by a different policy such as the Internal Audit Charter);
  - the whistleblower and the management must be informed of the manner in which the report was solved.
- ❖ the whistleblowing policy should further include provisions on key areas (examples);
  - **whistleblower protection and non-retaliation mechanisms** – include a commitment to protect the whistleblower and describe the safeguards implemented to ensure such protection is effective;
  - **confidentiality and data protection provisions** – include a commitment to preserve confidentiality (disseminate information related to the tip off on a need-to-know basis and provided that despite such dissemination the identity of the whistleblower remains confidential, unless the whistleblower consents to the unveiling of their identity; describe the safeguards implemented to ensure full observance of data protection requirements);
  - type and amount of information offered as feedback when the whistleblower discloses identity and gives contact details;
  - provisions on **anonymous reporting** – tip offs should be given the same importance and should be investigated the same way, regardless of whether the reporting is anonymous or the whistleblower discloses their identity; this is an important pre-requisite to ensure the effectiveness of the whistleblowing channel, as even when non-retaliation is promised, people often fear the consequences (formal or informal) of speaking up; this is also dependent on the company or even country culture, however in Romania whistleblowing is sometimes associated with bad connotations; encouraging anonymous reporting in Romania will lead to having a more effective whistleblowing mechanism, as well as support in building a 'speaking up' culture;

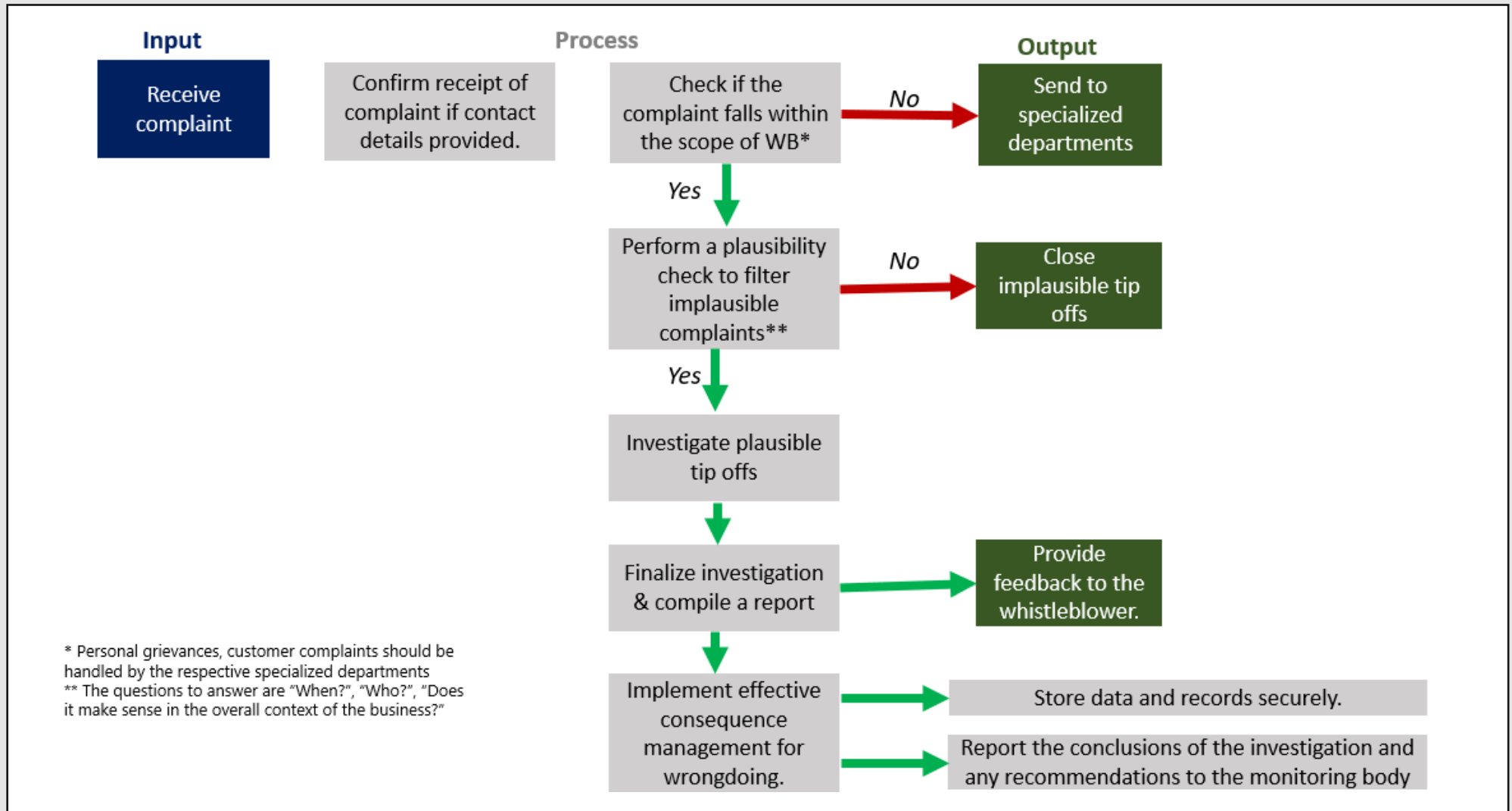
- **open door policy and tone from the top** – strongly encourage stakeholders to use the whistleblowing mechanism to report concerns in good faith.

To ensure **efficiency and effectiveness**:

- ❖ the reporting channels and the designated person must be brought to the attention of all employees and must be displayed publicly (on the corporate website), as well as at the headquarters, in a visible and accessible place;
- ❖ the whistleblowing policy must be brought to the attention of all employees;
- ❖ consequence management for wrongdoing is a key aspect;
- ❖ regular awareness and enforcement campaigns, including anonymized communication of consequences;
- ❖ the monitoring body should monitor number, types of claims, channels, and should advise on enforcement and consequence management.



# The Whistleblowing Process



# Key Recommendations for Whistleblowers

## Reporting an Incident

Remember that whistleblowing can be a challenging and complex process, but by following these recommendations and seeking support, the whistleblowers can help promote accountability and integrity within the organization.

### ❖ **Choosing the Reporting Channel**

- Internal vs. External Channels: Determine whether to report the breach internally within the organization or externally to competent authorities. The EU Directive encourages the use of internal channels when possible but protects whistleblowers who choose to report directly to external bodies, especially if they believe the internal channels will not address the breach effectively or if they fear retaliation.
- Public Disclosures: Consider public disclosure (reporting to the media or the public) only if internal and external channels have been exhausted or are not expected to function properly, or if there is an immediate or manifest risk to the public interest.

### ❖ **Assessing the Breach**

- Scope of the Breach: Ensure the reported issue falls within the scope of the breaches covered by the law;
- Information Accuracy: Make sure that the information reported is as accurate and complete as possible. The protection offered by the Whistleblowing Policy applies to whistleblowers who had reasonable grounds to believe that the information on breaches reported was true at the time of reporting and fell within the scope of the whistleblowing legislation.

### ❖ **Understanding Protections Offered**

- Confidentiality: Whistleblowing Policy must ensure the confidentiality of the whistleblower's identity. Understand the measures in place to protect personal data and the confidentiality of the information provided.
- Protection Against Retaliation: Familiarize yourself with the protections against any form of retaliation, including dismissal, demotion, and discrimination.

### ❖ **Legal and Supportive Measures**

- Legal Remedies and Support: Depending on the nature of the misconduct and the potential risks involved, you may want to seek legal advice before making a report. A legal expert can provide guidance on your rights, protections, and the best course of action.
- Cooperate with investigations: If your report leads to an investigation, cooperate fully with investigators and provide any additional information or evidence you may have. Your cooperation can help ensure a thorough and fair investigation process.

### ❖ **Record-Keeping**

- Documentation: Keep detailed records and documentation of the breach (including dates, times, individuals involved, and any evidence available such as emails, documents, or photographs). This documentation can be crucial if there is a need to prove the report's content, the response, or any case of retaliation.

### ❖ **Follow-Up**

- Adhere to the reporting procedures outlined in the whistleblowing policy or any relevant laws or regulations. This may include submitting a written report, providing specific details of the misconduct, and identifying yourself (or choosing to remain anonymous, if allowed).
- Monitor for retaliation: stay vigilant for any signs of retaliation following your report, such as changes in your work environment, negative performance evaluations, or harassment. Report any retaliation promptly to the appropriate authorities or legal experts.

### ❖ **Seek Support:**

- Whistleblowing can be a stressful and isolating experience, so seek support from friends, family, or support groups who can offer emotional support and guidance throughout the process.
- Be prepared for possible repercussions: Understand that whistleblowing can sometimes lead to retaliation or negative consequences, such as harassment, discrimination, or even termination. Consider the potential risks and prepare yourself emotionally and financially for any repercussions.

# Examples of Incidents Which Should be Reported

**Non-compliant behavior** qualifies as a business-related incident, which represents a criminal, administrative or disciplinary offence or which is contrary to the object or purpose of the law .

## ❖ Categories of Business-Related Incidents (examples):

- **employee harassment** – offensive, abusive or other unwanted behavior at the workplace which violates the personal dignity of the victim or creates an intimidating, hostile or humiliating environment for the victim (e.g. through physical violence, threats, sexual advances or insulting comments);
- **employee discrimination** – placing an employee at a disadvantage regarding employment and working conditions, on the basis of race, color, religion or belief, ethnic or national origin, gender, sexual orientation, marital status, age or disability;
- **conflict of interests** – a conflict of interests exists when a company's employee uses their position to further their personal interest beyond employment-based rewards and compensation rather than acting in the best interest of the company;
- **violations of insider rules** – abuse of insider knowledge obtained by a company's employee in his or her function at the company, as defined by the insider trading legislation;
- **active bribery** – the promise to give or the giving of any payment or any other advantage, whether directly or through intermediaries, to someone holding a public office (public bribery) or to someone in business (private bribery) with the intention and expectation of obtaining an unlawful benefit in return for the bribe
- **passive bribery** – the acceptance of a payment of any other advantage, whether directly or through intermediaries, from someone in return for favoring the giver in an unlawful way;
- **theft** – the unauthorized taking of company's property with the intention to not return that property to the company;
- **misuse of company assets** – the unauthorized use of company's assets for other reasons than to conduct business; the personal use of electronic communication tools on a limited exceptional basis is acceptable as long as it is compliant with internal regulations;
- **fraud** – the criminal offence of deliberately deceiving another person to unjustly obtain an economic advantage (payment, property, or service);
- **embezzlement** – the fraudulent appropriation by a person for their own use of property or money entrusted to them but owned by someone else;
- **false records** – untrue reporting of financial data with the intention to misrepresent the financial situation or conceal financial damage to a legal entity;

- **manipulation of records** – any other violation of the company's Code of Conduct (e.g. violations of data privacy, falsification of documents which may be unrelated to fraud or false records such as expense claims, violations of health and safety laws, retaliation against 'speaking up' or the termination of an agreement with a company's business partner(s) as a result of unethical behavior of the company's business partner.

# References: The European Union Legislation

*In the European Union, whistleblowing is regulated by **DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 23 October 2019 on the protection of persons who report breaches of Union law.*

Directive (EU) 2019/1937 provides for specific protections for whistleblowers, which include protection from retaliation (e.g., dismissal, demotion, workplace harassment etc.).

**To enjoy protection, whistleblowers must have reasonable grounds to believe, considering the information available to them at the time of reporting, that the matters reported are true and fall with the meaning of the whistleblowing legislation.**

This requirement is a safeguard against malicious, frivolous or abusive reports (i.e. those who, at the time of reporting, deliberately and knowingly report wrong or misleading information, do not enjoy protection). At the same time, this requirement ensures that protection is not lost when a person reported inaccurate information by honest mistake. A persons' motives to report wrongdoing should be irrelevant in deciding whether they receive protection for reporting, provided that such person acted in good faith as per the law.

## Key Provisions of the Directive:

### ❖ Scope of Application

- Covers reports on breaches of EU law in areas such as public procurement, financial services, product and transport safety, environmental protection, public health, and consumer protection.
- Applies to private entities with 50 or more employees and all public sector entities, with some exceptions for municipalities and entities with fewer than 50 employees.

### ❖ Channels for Reporting

- Obliges organizations to establish internal reporting channels that are secure and ensure the confidentiality of the whistleblower's identity.
- Encourages whistleblowers to use internal channels before resorting to external ones, unless they believe that the breach cannot be effectively addressed internally or expect retaliation.

### ❖ Protection Measures

- Prohibits all forms of retaliation against whistleblowers, including dismissal, demotion, and intimidation.
- Provides measures for support and protection, including legal aid and financial assistance, and psychological support for whistleblowers.

### ❖ **Procedural Requirements**

- Requires that feedback is provided to whistleblowers within a reasonable timeframe, not exceeding three months for internal reporting and six months for external reporting.
- Mandates the designation of a competent authority for the receipt of reports, follow-up, and coordination with other bodies.

### ❖ **Best Practices for Implementation**

- Establish Clear Reporting Channels:
  - Ensure that reporting channels are easily accessible to all employees and are designed to safeguard the confidentiality of the whistleblower.
  - Implement a user-friendly reporting system that allows for written and, where possible, oral reports.
- Promote a Supportive Reporting Environment:
  - Foster a culture that encourages reporting of breaches by highlighting the organization's commitment to integrity and the protection of whistleblowers.
  - Conduct regular training for employees and management on how to report breaches and on the importance of whistleblowing for organizational accountability.
- Provide Adequate Protection and Support:
  - Implement strict policies to prevent any form of retaliation against whistleblowers and establish clear procedures for dealing with such cases.
- Ensure Transparency and Follow-Up:
  - Maintain a transparent process for handling reports, ensuring that whistleblowers are kept informed of the progress and outcomes of their reports.
  - Conduct thorough investigations into reported breaches and take appropriate corrective actions in a timely manner.
- Review and Update Policies Regularly:
  - Regularly review and update whistleblowing policies and procedures to ensure they remain effective and reflect any changes in legislation or organizational structure.
  - Engage stakeholders, including employee representatives, in the review process to gain insights and foster trust in the whistleblowing system.

By adhering to these guidelines and the provisions of the Directive (EU) 2019/1937, organizations can create a robust framework for the protection of whistleblowers, thereby enhancing transparency, accountability, and the rule of law within the European Union.

In Romania the Directive (EU) 2019/1937 was transposed in **Law 361/2022** on Protection of whistleblowers in the public interest.

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