

Guide to Whistleblowing

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01. Which body of rules govern the status of whistleblowers?

Sweden

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In Sweden, whistleblowers are protected under:

- the Whistleblowing Act (SFS 2021:890) addresses reports about violations of EU law or irregularities in the public interest;
- the Discrimination Act (SFS 2008:567) addresses reports about discrimination, harassment and sexual harassment; and
- the Freedom of the Press Act (SFS 1949:105) and the Fundamental Law on Freedom of Expression (SFS 1991:1469) address public sector employees' freedom of communication to certain media outlets, etc.

Also, sector-specific legislation and regulation may impose a disclosure obligation on a whistleblower, such as the Patient Safety Act (SFS 2010:659).

The Whistleblowing Act entered into force on 17 December 2021 and enacts the Whistleblowing Directive (Directive (EU) 2019/1937[1]). The Whistleblowing Act, however, has a wider scope of applicability than the Whistleblowing Directive as it also protects whistleblowers who report on irregularities in the public interest.

[1] 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.

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02. Which companies must implement a whistleblowing procedure?

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The Whistleblowing Act requires businesses (within both the private and public sector) that at the beginning of the calendar year employ 50 or more employees to establish internal reporting channels and procedures. Internal reporting channels and procedures must be implemented by:

- 17 July 2022, where the business employs 250 or more employees; and
- 17 December 2023, where the business employs between 50 and 249 employees.

The Whistleblowing Act also requires competent authorities to establish external reporting channels by 17 July 2022.

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03. Is it possible to set up a whistleblowing procedure at a Group level, covering all subsidiaries?

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Yes; however, a whistleblowing procedure established according to the Whistleblowing Act can only be shared between group companies employing 50 to 249 employees at the beginning of the calendar year. Such group-wide whistleblowing procedures can only include the receipt of reports and investigations into the reported matters (save for contacts with the whistleblower).

It is, however, possible to deviate from the Whistleblowing Act as it relates to internal reporting channels and procedures to be applied concerning employees by way of a collective bargaining agreement (CBA) entered into by trade unions and employer organisations at a central level. As such, the labour market parties within the IT and tech sector have entered a CBA that allows group-wide whistleblowing procedures to, inter alia, also cover group companies employing 250 or more employees. The CBA is only applicable to members of the relevant employer organisations party to the CBA.

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04. Is there a specific sanction if whistleblowing procedures are absent within the Company?

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If whistleblowing procedures, including internal whistleblowing channels, are not established according to the Whistleblowing Act, the Swedish Work Environment Authority (SWEA, being the supervisory authority) may order the business to fulfil its legal obligations subject to a fine.

Any business preventing or hindering whistleblowing according to the Whistleblowing Act (eg, by omitting to implement whistleblowing procedures) may be held liable for damages payable to the relevant persons.

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05. Are the employee representative bodies involved in the implementation of this system?

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There is no obligation to include employee representative bodies in the implementation of whistleblowing procedures.

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06. What are the publicity measures of the whistleblowing procedure within the company?

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An internal whistleblowing channel and procedure established under the Whistleblowing Act must be made available for persons who are active within the business, including employees, volunteers, trainees, persons otherwise performing work under the supervision or direction of the business, the self-employed who perform services, members of the business's administrative, management or supervisory bodies and shareholders operating within the business.

In addition, businesses must provide clear and easily accessible information on:

- how to report via the internal reporting channel;
- how to report via external reporting channels (both national and EU bodies); and
- as applicable, the whistleblowers' constitutional rights in respect of freedom of speech, freedom of communication and freedom to procure information.

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07. Should employers manage the reporting channel itself or can it be outsourced?

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Businesses may choose to manage reporting channels in-house or to outsource the management of reporting channels to third parties. Regardless, businesses should designate independent and impartial persons or departments (including third-party entities) to receive reports, maintain communication with whistleblowers, follow-up on reports and provide feedback to whistleblowers.

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08. What are the obligations of the employer regarding the protection of data collected related to the whistleblowing procedure?



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Personal data must not be retained or otherwise processed unless necessary for the purposes the personal data was collected. Further, reporting persons should be informed upfront of the personal data processing being carried out.

Any personal data collected under the Whistleblowing Act and that is relevant to the follow-up of the report must be deleted two years after the closure of the matter at the latest, unless the personal data controller has another lawful basis for continued processing.

Only authorised persons, departments or entities should be allowed to gain access to personal data related to the follow-up of a report. Furthermore, access to personal data should be kept on a need-to-know basis.

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09. What precautions should be taken when setting up a whistleblowing procedure?



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Businesses should ensure that personal data processed through a whistleblowing channel is handled according to the GDPR and the Whistleblowing Act, meaning the personal data controller should implement sufficient technical and organisational safety measures to protect personal data.

Further, employees and other impacted persons should, as a general rule, be informed upfront of any processing of personal data that may take place.

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10. What types of breaches/violations are subject to

whistleblowing?

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As a starting point, any breach, violation, irregularity or misconduct, as well as any personal grievance, may be subject to whistleblowing.

That said, the Whistleblowing Act only applies to whistleblowing in a work-related context concerning:

- violations of EU law as per the Whistleblowing Directive; and
- irregularities in the public interest.

Irregularities in the public interest include any act, omission, accident or other occurrence, whether intentional or negligent, ongoing or historical that may harm the public at large. Whistleblowing concerning other irregularities and misconduct, such as personal grievances or concerns related to the reporting person's working conditions, are not protected under the Whistleblowing Act. Instead, such whistleblowing may be protected under, for example, the Discrimination Act.

Also, note that the Whistleblowing Act does not apply to whistleblowing concerning certain matters of national security.

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11. Are there special whistleblowing procedures applicable to specific economic sectors or professional areas?

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Yes, there are sector-specific regulations that have precedence over the Whistleblowing Act, such as within the financial services sector.

Also, certain professionals can be held liable for any wilful breach of qualified secrecy applicable by law.

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12. What is the legal definition of a whistleblower?

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There is no legal definition of "whistleblower" under Swedish law.

However, the Whistleblowing Act defines a “reporting person” as a person who in a work-related context has received or collected information about irregularities in the public interest and who reports such irregularities and who belongs to one or more of the following categories:

- employees (including part-time and fixed-term employees, and including management team members);
- job applicants;
- volunteers (including applicants);
- trainees (including applicants);
- persons otherwise available to perform or who perform work under the supervision or direction of the business (including agency and temp workers);
- self-employed people who seek to or who perform services (including independent contractors and subcontractors);
- persons available to be or who are part of the business’s administrative, management or supervisory bodies (including the managing director and members of the board);
- shareholders who are available to or who operate within the business; or
- persons having belonged to any of the above categories and having received or collected the information in their work-based relationship with the business.

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13. Who can be a whistleblower?

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Please see question 12.

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14. Are there requirements to fulfil to be considered as a whistleblower?

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Please see question 12.

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15. Are anonymous alerts admissible?

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Yes; however, a business is under no obligation to accept anonymous reports and can demand that whistleblowers identify themselves in connection with reporting.

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16. Does the whistleblower have to be a direct witness of the violation that they are whistleblowing on?



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No; however, a whistleblower seeking protection under the Whistleblowing Act must have received or collected the information in a work-related context.

Also, a whistleblower must have reasonable grounds to believe that the information reported is true.

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17. What are the terms and conditions of the whistleblowing procedure?



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A whistleblowing procedure under the Whistleblowing Act must be designed to meet the following requirements:

- the whistleblower must be able to report both in writing and verbally (including in a physical meeting); and
- as a main rule, the whistleblower:
 - must receive an acknowledgement of receipt of the report within seven days of reporting;
 - should receive feedback regarding any action envisaged or taken as follow-up and on the grounds for such follow-up within three months of the acknowledgment of receipt of the report; and
 - should receive feedback regarding any action envisaged or taken as follow-up and on the grounds for such follow-up within three months of the acknowledgment of receipt of the report; and

It is possible to deviate from the above terms and conditions by way of a CBA; however, only as it relates to employees of the business (see question 3).

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18. Is there a hierarchy between the different reporting channels?



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The Whistleblowing Act distinguishes between:

- internal reporting;
- external reporting; and
- public disclosures.

According to the Whistleblowing Act, a whistleblower is always free to choose to report either:

- internally via or outside the internal reporting channels; or
- via external reporting channels.

External reporting outside external reporting channels and public disclosures, however; are only protected where specific conditions are met. The Whistleblowing Act allows:

- external reporting outside external reporting channels where the whistleblower:
 - has reported externally without such reporting having resulted in appropriate follow-up action or where the whistleblower has not received feedback within the statutory timelines; or
 - has reasonable grounds to believe that there is an imminent or manifest danger to life, health, safety or risk of substantial damage to the environment or otherwise has a legitimate reason; or
 - has reasonable grounds to believe that external reporting would entail a risk of retaliation or not result in the irregularity being effectively addressed.
- public disclosures (including social media posts) where the whistleblower:
 - has reported externally without such reporting having resulted in appropriate follow-up action or where the whistleblower has not received feedback within the statutory timelines; or
 - has reasonable grounds to believe that there is an imminent or manifest danger to life, health, safety or risk of substantial damage to the environment or otherwise has a legitimate reason; or
 - has reasonable grounds to believe that external reporting would entail a risk of retaliation or not result in the irregularity being effectively addressed.

The Whistleblowing Act does not limit the protection offered to whistleblowers under other legislation, such as the Discrimination Act, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

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19. Should the employer inform external authorities about the whistleblowing? If so, in what circumstances?



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There is no such legal requirement.

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20. Can the whistleblower be sanctioned if the facts, once verified, are not confirmed or are not constitutive of an infringement?

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If the whistleblower, at the time of reporting, had reasonable grounds to believe that the information reported was true (and of course assuming that all other conditions for protection are met) the whistleblower cannot, as a main rule, be sanctioned or otherwise held accountable.

However, this does not apply to a willful breach of qualified secrecy or to the collection of information where such collection constitutes a self-standing criminal offence.

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21. What are the sanctions if there is obstruction of the whistleblower?

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A business that prevents or hinders whistleblowing or retaliates against whistleblowers can be liable to pay financial and general damages to the relevant person.

The SWEA may also order the business to implement whistleblowing procedures under the Whistleblowing Act, or be subject to a fine.

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22. What procedure must the whistleblower follow to receive protection?

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Regarding the procedure, please see questions 17 and 18.

A reporting person (see question 12) receives protection under the Whistleblowing Act when:

- the reported information concerns either:
 - a violation of EU law; or
 - an irregularity in the public interest (cf. question 10) in a business in which the reporting person is or has been operative or will operate, or with which the reporting person is or has been in contact through the reporting person's work; and
- the reporting person has reasonable grounds to believe that the reported is true; and
- the reporting is made internally or externally to an authority (including both national and EU bodies) or publicly disclosed under the Whistleblowing Act.

A whistleblower may also enjoy protection under other applicable legislation, such as the Discrimination Act.

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23. What is the scope of the protection?



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The Whistleblowing Act provides whistleblowers with protection against criminal, administrative and civil liability:

- for any breach of confidentiality except for liability for the wilful breach of qualified secrecy; or
- for the collection of information provided that the person had reasonable grounds to believe that the collecting was necessary to uncover the irregularities, save for when the collecting constitutes a self-standing criminal offence.

The Whistleblowing Act further protects whistleblowers against any retaliation and prohibits businesses from restricting or hindering reporting.

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24. What are the support measures attached to the status of whistleblower?



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The competent authorities are responsible for providing easily accessible information on the advice and support offered by the authority and other parties.

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25. What are the risks for the whistleblower if there is abusive reporting or non-compliance with the procedure?

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In a worst-case scenario, the whistleblower lacks protection under the law and may therefore be held criminally, administratively and civilly liable and, as applicable, subject to disciplinary measures.

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