

Whistleblowing

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Most compliance cases begin with information from inside the company. Employees who observe misconduct are often the only source that can reveal it, which is why enforcement authorities in the United States reward them generously. The SEC's whistleblower programme pays a percentage of the sanctions recovered, and the False Claims Act gives private plaintiffs a share of the amounts recovered for the government. Several large settlements involving pharmaceutical companies began with such actions. The European Union adopted a Whistleblower Directive in 2019, which required member states to protect persons who report breaches of Union law and to ensure internal and external reporting channels.¹

Switzerland has no comprehensive statutory protection for whistleblowers in the private sector. A bill that would have regulated the conditions under which employees may report irregularities to authorities or the public failed in Parliament in March 2020, after years of discussion. Employees who report to the authorities thus rely on the general rules of labour law, according to which an abusive dismissal may lead to compensation, and on the case law of the Federal Supreme Court on the duty of loyalty. The OECD Working Group has repeatedly criticised this situation. In practice, the large Basel groups operate internal reporting systems that allow anonymous reports and that prohibit retaliation, because foreign law requires it and because these systems are an indispensable source of information.²

1 Notes

1. Section 21F of the Securities Exchange Act of 1934 (SEC whistleblower programme, introduced by the Dodd-Frank Act of 2010); Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. To be verified. ↩

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2. On the failed revision of the Code of Obligations concerning the protection of whistleblowers (Business 13.094), rejected by the National Council in March 2020, see the records of the Federal Assembly; on the criticism of the OECD Working Group, see the Phase 4 Report on Switzerland of 2018. To be verified. ↩

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