

The European Union (EU) Whistleblower Protection Directive



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OVERVIEW

Fluor prohibits any form of retaliatory action against employees who raise compliance and ethics concerns, ask questions, make reports in good faith, participate in investigations, refuse to participate in suspected improper or wrongful activities, or exercise workplace rights protected by law (“Protected Activity”).

The European Union (EU) has taken steps to ensure that potential whistleblowers can easily and in full confidentiality bring the information they possess to the attention of the relevant competent authorities that are able to investigate and remedy the problem. The EU Parliament and Council on the Protection of Persons Who Report Breaches of Union Law enacted (EU) 2019/1937, The EU Whistleblower Protection Directive (The Directive).

The Directive ensures that potential whistleblowers are protected for raising concerns or disclosing information about potential breaches of laws that are intended to protect EU citizens and that can cause serious harm to the public interest. The Directive requires EU Member States to implement The Directive into National Law.

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WHAT TO REPORT

Who Can Be a Whistleblower?

The Directive applies to reporting persons who have acquired information on breaches in a work-related context, and to a category of persons who may not fall in the definition of worker but who can still play a key role in exposing breaches of EU law, including the following:

- ▶ Current and Former (part-time or full-time) employees
- ▶ Members of Professional Bodies
- ▶ Third Parties and Facilitators
- ▶ Job Applicants
- ▶ Shareholders
- ▶ Suppliers and Vendors
- ▶ Trainees
- ▶ Directors
- ▶ Freelancers
- ▶ Temporary Workers
- ▶ Non-executive Directors
- ▶ Sub-contractors
- ▶ Interns
- ▶ Volunteers
- ▶ The Self-employed
- ▶ Leavers
- ▶ Fixed-term Contract Workers

A reporting person is a natural person who reports or publicly discloses information on breaches acquired in the context of their work-related activities. Work-related activities include current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information on breaches and within which those persons could suffer retaliation if they reported such information. A reporting person can be located inside or outside of the EU.

Anonymous reports, if authorized by Member States, shall qualify for protection from retaliation if their identity is subsequently disclosed and they suffer retaliation.

What Can Be Reported?

The Directive focuses on EU laws that, if breached, would cause serious harm to the public interest. Specific policy areas falling within scope of The Directive include the following:

- ▶ Breaches affecting the financial interest of the EU
- ▶ Financial Services, Products, and Markets
- ▶ Public Health
- ▶ Competition Law
- ▶ Food and Feed Safety, Animal Health and Welfare
- ▶ Public Procurement
- ▶ Consumer Protection
- ▶ Product Safety and Compliance
- ▶ Radiation Protection and Nuclear Safety
- ▶ Environmental Protection
- ▶ Protection of Privacy and Personal Data
- ▶ Transport Safety
- ▶ Corporate Tax
- ▶ EU Financial Interests

Whistleblowers who report a concern arising from a breach or potential breach of any laws critical to these policy areas will be protected from retaliation as long as the report is made in good faith.

Some Member States that have transposed The Directive into national law have applied The Directive's requirements to include the breach of any national law.

What Is Required For a Report?

A report must contain information, including reasonable suspicions, about a breach of EU law, including information necessary to reveal:

- ▶ Breaches that have already taken place,
- ▶ Breaches that have not yet materialized, but are very likely to take place,
- ▶ Acts or omissions that the reporting person has reasonable grounds to consider a breach, or
- ▶ Any attempt to conceal a breach

A report should:

- ▶ Be raised if reasonable concerns or suspicions about a breach of EU law exist;
- ▶ Be based on a reasonable belief, in light of the circumstances, and the information available at the time of reporting, that the matters reported are true; and
- ▶ Not be based on information already fully available in the public domain or that is unsubstantiated rumor and hearsay, or that is knowingly false.

A reporter is not required to provide conclusive or dispositive evidence.

HOW TO REPORT

Internal/Local Channels

While workers are encouraged to report using Local Channels, they have access to and can choose to report using any of Fluor's other Speak Up Channels.

- ▶ Local Channels are those Channels internal to a Fluor legal entity such as a local supervisor, Human Resources, Employee Relations, or Compliance & Ethics representatives. Some advantages of Local Channels include assurance that the relevant information swiftly reaches those closest to the source of the problem, who have an overview of what is happening locally and can expediently remediate and address the issues, and who possess the powers to remedy the problem. Local Channels also tend to establish trust among whistleblowers and increase speak up culture while also providing comfort and local language support.
- ▶ Workers who choose to report via a Local Channel can request that the report not be shared with or handled by Fluor's centralized reporting processes or individuals outside of the local office. Consent from the reporter must be obtained before the matter is transferred to Fluor's centralized reporting system to be handled.
- ▶ Reports can be made in writing or orally. Reporters can also request a personal meeting to make a report.

When a report is made using [Fluor's Compliance & Ethics Integrity Portal & Hotline \(www.FluorIntegrity.com\)](http://www.FluorIntegrity.com), the reporter will have the opportunity to select which Channel they would like to use to handle the report. By selecting the Channel, consent for the matter being handled by the Channel selected is presumptively granted.

Reports made through other Fluor Speak Up Channels will be entered into the Integrity Portal & Hotline (www.FluorIntegrity.com) and subsequently directed to the appropriate Local Channel for handling.

Reports can also be made anonymously. To enhance the opportunity for a thorough investigation, anonymous reports should be accompanied by as much detail as possible. Failure to provide sufficient detail can result in the inability to conduct a thorough inquiry or failure to come to an accurate conclusion.

External Channels

The Directive allows for reports to be made utilizing an external reporting Channel, Channels operated and managed by competent authorities outside of the Fluor organization such as institutions, bodies, offices, or agencies of the EU. External Channels are those designated by Member States as competent and that have the necessary capacities and powers to ensure appropriate follow-up, investigation, and handling of the matter, including ensuring appropriate remedial actions can be taken.

In addition to matters set out above regarding breaches of EU Law, reports of other serious offences or serious matters may also be reported through External Channels.

Serious offences or other serious matters must be:

- ▶ Information of public interest
- ▶ Information about criminal offences, including violation of any duty of confidentiality, misuse of financial information, theft, fraud, embezzlement, and bribery
- ▶ Information about serious or repeated violations of other national laws
- ▶ Information about sexual harassment and other personal conflicts in the workplace

Not included in the scope of matters that may be reported via an External Channel are concerns about violations of the rights of the reporter if raised solely in the individual's interest, e.g., personal employment terms and conditions, dissatisfaction with salary levels, and less serious workplace conflicts and disagreements.

Competent authorities operating External Channels are required to handle reports within the same parameters as those operating Internal Channels.

External Channels for Fluor legal entities are listed below.

POLAND	TBD
GERMANY	TBD
SPAIN	TBD
BELGIUM	Federal Ombudsman, Center for Integrity www.federaalombudsman.be/nl/klokkenluiders
DENMARK	Danish Data Protection Agency www.whistleblower.dk
NETHERLANDS	Dutch Whistleblowers Authority www.huisvoorklokkenluiders.nl/english

Public Disclosures

External Channels also include making such information available in the public domain, including for instance, directly to the public through online platforms or social media, or to the media, elected officials, civil society organizations, trade unions, or professional and business organizations.

A person who makes a public disclosure shall qualify for protection under The Directive if:

- ▶ The person first reported internally and externally, or directly externally, but no appropriate action was taken in response to the report within the required time period, or
- ▶ The person has reasonable grounds to believe that
 - The breach may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible danger; or
 - In the case of external reporting, there is a risk of retaliation, or there is a low prospect of the breach being effectively addressed due to the circumstances of the case, such as those where evidence may be concealed or destroyed or where an authority may be in collusion with the perpetrator of the breach or involved in the breach.

HANDLING A REPORT

What Happens After a Report Is Made



Pursuant to The Directive and as set out in Fluor's Investigations Guidelines:

- ▶ An accurate transcript of an oral report will be documented by the person responsible for handling the report.
- ▶ Where a person requests an in-person meeting, subject to consent of the reporting person, a record of the meeting will be documented by making a recording of the conversation, or through accurate minutes prepared by the person responsible for handling the report.
- ▶ Information will only be shared with the reporter to the extent that information does not prejudice the internal inquiry or the investigation or affect the rights of the person(s) concerned.
- ▶ All personal identifiable information will be processed consistent with Fluor's Information Privacy and Security Policy (HR-760).

Protection From Retaliation

Retaliation is a deliberate, adverse, detrimental employment action or omission, taken against an employee for seeking guidance; raising compliance and ethics concerns in good faith, including breaches of law pursuant to The Directive; or for cooperating with an investigation.

Reporting persons will be protected from any form of retaliation, taken, encouraged, or tolerated, whether direct or indirect.

For an adverse treatment to be considered retaliation, there must be a close link between what was reported and the adverse treatment suffered, directly or indirectly, by the reporting person.

Once the reporting party shows that they reported breaches or made a public disclosure and suffered a detriment, the burden of proof to show retaliation shifts to the person who took the detrimental action. The person who took the detrimental action must then prove that the measure taken was based on duly justified grounds.

- ▶ Anonymous reporters whose identity is subsequently revealed shall also qualify for protection from retaliation.
- ▶ The types of retaliatory action expressly covered by The Directive include the following:
 - Blacklisting from industry or sector employment
 - Failure to convert a temporary employment contract into a permanent one
 - Psychiatric or medical referrals
 - Cancellation of license or permit
 - Failure to renew, or early termination of, a temporary employment contract
 - Reduction in wages
 - Change in working hours
 - Financial loss, including loss of business
 - Reprimand or other penalty
 - Change of work location
 - Harm to reputation
 - Suspension
 - Coercion, intimidation, or ostracism
 - Imposition of disciplinary measure
 - Transfer of duties
 - Demotion
 - Lay-off
 - Withholding promotion
 - Discrimination, disadvantageous or unfair treatment
 - Loss of income
 - Withholding training
 - Dismissal
 - Negative employment reference
 - Early termination or cancellation of contract for goods or services
 - Negative performance assessment

Remediation

Effective, proportionate, and dissuasive penalties will be taken for (a) hindering or attempting to hinder reporting; (b) retaliation; (c) bringing vexatious proceedings against reporters and facilitators or other third parties; and (d) breach of duty to maintain confidentiality of the identity of reporting persons.

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