

EU Whistleblower Protection Directive

How Can NAVEX Global Help You Comply?

What is the EU Whistleblower Protection Directive?

Directive (EU) 2019/1937 (commonly referred to as the “EU Whistleblower Protection Directive”) was adopted by the European Council in 2019. It aims to strengthen protections for people who report breaches of EU law, create safer, better-defined reporting channels across all EU member states, and move member states towards a unified legal framework.

The Directive has implications for hundreds of thousands of organisations within the EU – and beyond. December 2021 marks the deadline for member states to enact national law satisfying the requirements of the Directive for organisations of 250 people or more, leaving two further years for smaller organisations of 50 or more people. Laws will vary by country, as the Directive establishes minimum standards, which will be transposed to national law in each member state.

What are the benefits of complying with the Directive?

Beyond the legal requirements established in the legislation, research suggests there are real benefits to organisations that encourage internal reporting. A George Washington University study showed that higher organisational whistleblowing rates correlate with decreases in material lawsuits, settlements, and negative news stories¹. Low reporting numbers rarely indicate a lack of misconduct in an organisation. Rather, unreported concerns represent a serious risk, creating organisational blind spots that can become glaring (and sometimes, public) crises if left unresolved.

An effective, trusted avenue for employees and affected parties to report allegations of wrongdoing is fundamental to creating a more ethical culture in any organisation. Beyond empowering and protecting individuals who choose to speak up, the insight gained through a mature incident management programme can be hugely beneficial to organisations of any size. The knowledge collected from whistleblowing can be used to identify areas of organisational risk, inform and enhance internal training programmes, and modify policies to encourage more positive operational outcomes.

¹ George Washington University, Evidence on the Use and Efficacy of Internal Whistleblowing Systems, 2018

Does our current governance, risk and compliance (GRC) programme align with the Directive?

While legislation will vary at member state level, the Directive establishes several fundamental minimum requirements organisations must satisfy. NAVEX Global offers a range of solutions designed to help you meet the requirements laid out in the Directive:

Directive 2019/1937 Requirement	NAVEX Global Platform Features
Provide safe, accessible channels to report incidents to the organisation. Whistleblowers should be able to submit reports orally, in writing, and/or in person.	NAVEX Global’s EthicsPoint® solution enables organisations to establish a central repository for reports from multiple channels. As the balance of reporting shifts towards digital and non-telephonic channels, organisations require varied, visible, accessible channels for whistleblowers within and outside of an organisation. NAVEX Global solutions enable you to capture web, telephone, mobile reports. Reports captured internally through conversations or in-person meetings can also be added to the system, allowing all reports to be properly managed and tracked in one place.
Maintain confidentiality for the whistleblower, the person named in the report, and any third parties referenced.	In addition to secure anonymous reporting capabilities, NAVEX Global incident management platforms are designed to help you operate your programme in a secure manner to ensure the confidentiality of individuals named in reports. Restricted dispatch features within the EthicsPoint solution ensure reports are routed only to authorised recipients and cannot be accessed by non-approved individuals. In addition, NAVEX Global provides data storage and hosting in its secure data centres, which include EU facilities.
Acknowledge receipt of reports within seven days.	Prompt report response times are driven by an efficient programme structure. NAVEX Global incident management solutions enable automated alerts and processes to assure reporters their case has been received and is being processed.
Respond to and follow up on reports within three months, define and detail the investigation and decision-making process.	<p>With NAVEX Global, organisations can use fully configurable role- and rule-based routing and automated workflows to streamline reporting structures and processes, helping keep cases moving and providing timely feedback to interested parties.</p> <p>The EU Whistleblower online training course, available through NAVEX Engage™, covers best practices and expectations for managers handling and escalating reports to give their employees confidence in the reporting process.</p>

Directive 2019/1937 Requirement	NAVEX Global Platform Features
<p>Maintain auditable reporting records while adhering to confidentiality requirements.</p>	<p>The comprehensive, searchable, secure collection of reports and reporting data created with a NAVEX Global incident management platform is an invaluable resource for auditors, investigators, and authorities and acts as a crucial safety net for organisations before, during and after an incident.</p> <p>GRC Insights™, NAVEX Global’s compliance benchmarking and analytics tool, is designed to deliver a holistic view of your risk and compliance reporting data and deliver custom dashboards to drive programme performance and inform strategic business decisions, creating deep operational and cultural value for the organisations that use it.</p>
<p>Protect whistleblowers against dismissal, demotion and other forms of retaliation.</p>	<p>NAVEX Global helps organisations create clear, auditable, thoroughly documented report management processes to help prevent and/or identify any potential retaliatory activity against whistleblowers.</p> <p>Encouraging reporting and protecting whistleblowers from retaliation goes beyond incident management. Organisations should develop, implement and maintain effective policies and processes that will protect employees from retaliation.</p> <p>A well-formed, broadly accepted code of conduct helps give employees the confidence to speak up. Policy and procedure management is key for distribution and attestation, especially when managed through an automated programme such as NAVEX Global’s PolicyTech™. NAVEX Global’s EU Whistleblower online training course provides employees and managers with training on best practices for reporting and how to identify and prevent retaliatory actions.</p>
<p>Provide workforce with appropriate information on the existence and proper usage of reporting channels.</p>	<p>NAVEX Global offers online training courses to help educate employees on best practices and procedures for raising concerns, the importance of utilising internal channels, when and what to report and what to expect through the reporting process. Digital and physical awareness materials, also available from NAVEX Global, help create visibility and communicate the availability of your reporting channels to employees and other stakeholders.</p>

Directive 2019/1937 Requirement	NAVEX Global Platform Features
Provide access to reporting channels for third-party networks to report breaches within a work-related context.	NAVEX Global incident management solutions encompass a broad collection of channels that can be extended to parties operating externally or tangentially to an organisation. Training and awareness programmes can be designed to include third-party networks and encourage broad knowledge of where to find (and how to use) appropriate reporting channels, and the extended protections from retaliation afforded therein.
Ensure impartiality and competence of the people managing the reporting channels and handling the reports.	The incident management solutions of NAVEX Global enable the involvement of third-party experts, either on a per-case basis, or entirely outsourcing the management of a reporting channel.

Frequently Asked Questions

What if we operate in multiple EU member states?

According to the text of the legislation, there is no legal basis requiring separate, dedicated whistleblower setups in each affected country. If member state legislation arises that does create a basis for this requirement, NAVEX Global enables you to create multiple intake systems customised by geographic location and/or subsidiary.

Does my whistleblower reporting system comply with data privacy legislation?

Depending on where you operate, the data associated with your incident management system is likely governed under one or many overarching data privacy regulations. NAVEX Global incident management solutions are tailored to help you satisfy both GDPR requirements and national data protection laws.

How will my whistleblower reporting system enable us to document accurate minutes of telephone reports, and allow reporters to check, agree to, and sign these minutes?

NAVEX Global contact centre agents will read the report to the reporter, before submission, giving the reporter an opportunity to modify and verify their report. Individuals submitting a telephone report can also, at your discretion, be given the opportunity to review their report online. This is achieved by inviting the reporter to log into the EthicsPoint web solution using their unique report key and password. Alternatively, authorised recipients can print the report and invite the reporter to sign it. The follow-up tool within the system facilitates dialogue and sharing of attachments as required.

How is anonymous reporting handled?

While provisions regarding anonymous reporting are likely to vary across member states, NAVEX Global's incident management solutions support anonymous reporting and case management where appropriate. While we have seen a steady decline in overall anonymous reporting across the industry over the past decade², the ability for whistleblowers to report and follow up on allegations anonymously remains a valuable tool in the compliance toolkit. Technological considerations such as anonymised reference coding, in-app messaging for anonymous reporters, and GDPR-compliant data privacy practices promote safety and trust for whistleblowers who decline to identify themselves.

² Penman, Carrie. "Risk & Compliance Incident Management Benchmark Report," NAVEX Global, 2021, p. 7.

This is a directive, not a regulation; what will the effect be for my organisation/state?

While this document pertains to the specific requirements laid out in the text of the Directive (rather than specific legislation), the Directive will have a direct effect in each member state. The requirements established by the Directive are required to be transposed into national law by each member state by 17th December 2021. The resulting laws will be legally enforceable at member state level from that date. We are closely monitoring the transposition process across all EU countries.

Will legal implementation differ among EU states?

The Directive seeks to establish a unified framework and legal standard across all member states. As each member state must transpose the Directive into national law, the states will have control over how individual aspects are applied at a local level. Some member states may extend their transposition to encompass a broader scope or stricter standards – this is allowable if their implementation meets or exceeds the minimum standard established in the Directive.

Will there be additional requirements in my country?

Member state transpositions may result in expanded legal requirements at the national level. Aspects such as types of misconduct reported and whether reports have been submitted anonymously may also see some disparity in the qualification for protection in different member states. Deterrents, such as financial or legal penalties for those organisations or persons that breach the new rules, will similarly be set at member state level and are likely to produce some divergence across the 27 member states.

The full extent of the differences will only become clear as we move closer to the December deadline.

Can I do more to encourage ethical behaviour in my organisation?

An incident management platform serves as a valuable foundation for any risk and compliance management programme. The reports captured through these channels constitute a wealth of information and can provide your leaders with valuable insight into the health and wellbeing of their organisation, its structures, and everyone directly involved in your operations.

Organisations that use whistleblowing and speak-up programmes to feed into their larger compliance framework see benefits in deeper insights and stronger workplace culture. NAVEX Global offers a comprehensive ecosystem of solutions and products that work in concert with your organisation's whistleblowing programme.

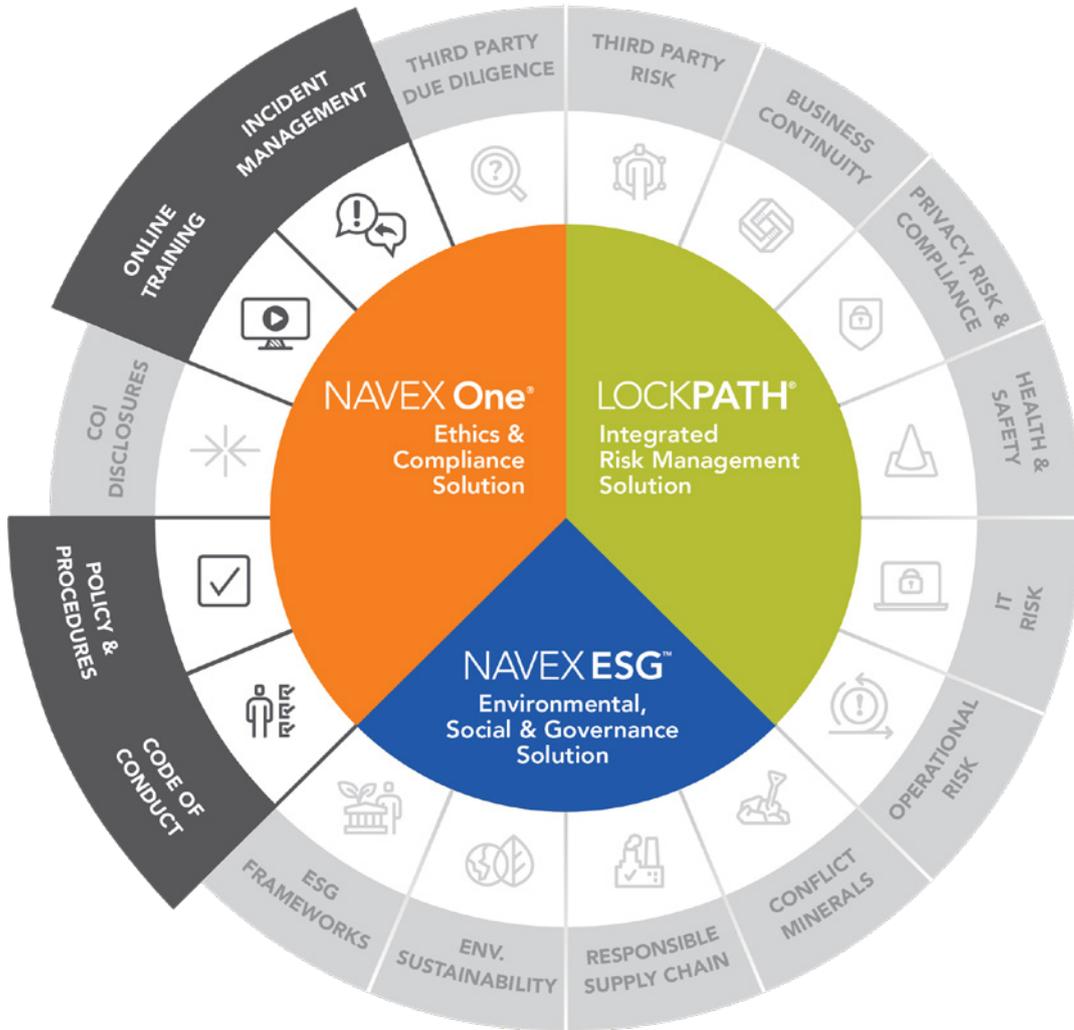
First, all ethics and compliance programmes should be underpinned by a strong **code of conduct**. This document should function as a thoughtful expression of an organisation's values, and reinforce the fact that employees are encouraged to speak up when they see something wrong.

Robust **training programmes** act as a strong foundation for promoting a speak-up culture when paired with whistleblowing programmes. Training programmes teach employees best practices, highlight real-world examples of sometimes complex issues, and show employees that their organisation takes unethical behaviour seriously.

Training and enforcement of your organisation's values is a continuous process. Many organisations employ a comprehensive, programmatic **policy management system** to effectively update, communicate, and distribute their internal policies among a varied collection of stakeholders. Centralised repositories and digital distribution systems provide employees easy reference while providing organisations with an auditable attestation record.

When implemented thoughtfully and maintained effectively, these systems work together to foster a more ethical organisational culture.

To learn more about the details and implications of the EU Whistleblower Protection Directive, please visit navexglobal.com or contact us to discuss the details of your organisation's ethics and compliance programme.



ABOUT NAVEX GLOBAL

NAVEX Global is the worldwide leader in integrated risk and compliance management software and services. Our solutions are trusted by thousands of customers around the globe to help them manage risk, address complex regulatory requirements, build corporate ESG programmes and foster ethical workplace cultures. For more information, visit www.navexglobal.com.