

Act on the Protection of Persons Reporting Irregularities (2021:890)

Chapter 1 Introductory provisions

Contents of the Act

Section 1

The content of this Act is divided as follows:

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Scope of the Act

Section 2

This Act applies to persons who, in a work-related context, report information concerning irregularities in the public interest.

This Act also applies persons who, in a work-related context, report information concerning irregularities consisting of any act or omission that:

1. violates a directly applicable legal act of the European Union within the scope of application of 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;
2. violates laws or other statutes referred to in Chapter 8 of the Instrument of Government and that implement or supplement an EU legal act within the scope of application of the same Directive; or
3. counteracts the aim or purpose of the provisions of an EU legal act within the scope of application of the same Directive.

Section 3

The Act does not apply to reporting of:

1. classified information under the Protective Security Act (2018:585); or
2. information pertaining to national security in the activities of a public authority in the area of defence and security.

Pursuant to Chapter 8, Article 7 of the Instrument of Government, the Government may issue more detailed regulations on which authorities are referred to in the first paragraph, point 2.

Relationship with other forms of protection

Section 4

This Act does not limit protections that apply under other acts and ordinances, or on other grounds.

Section 5

Chapter 1, Sections 1 and 7 of the Freedom of the Press Act and Chapter 1, Sections 1 and 10 of the Fundamental Law on Freedom of Expression contain provisions on the right of every person to report and publish information on any subject in certain media.

Invalidity of an agreement

Section 6

Unless otherwise follows from Section 7, an agreement is invalid insofar as it revokes or limits a person's rights under this Act.

Deviations in collective agreements

Section 7

Deviations from Chapter 5, Sections 2–9 concerning internal reporting channels and reporting and follow-up procedures may be made through collective agreements concluded or approved by central employee organisations, provided that the agreement does not revoke or limit an individual's rights referred to in Directive (EU) 2019/1937 of the European Parliament and of the Council.

Terms and expressions in this Act

Section 8

In this Act the following terms have the meaning set out in this Section:

1. 'report' or 'to report': the oral or written communication of information on violations through internal reporting, external reporting or public disclosure;
2. 'reporting person': a natural person who reports or publicly discloses information on irregularities acquired in the context of their work-related activities, and belongs to one of the following categories of persons:
 - a) workers;
 - b) persons enquiring about or applying for work;
 - c) persons applying for or carrying out volunteer work;
 - d) persons applying for or completing a traineeship;

- e) persons otherwise carrying out or standing ready to carry out work under an operator's supervision and direction;
 - f) self-employed persons applying for or carrying out a service,
 - g) persons standing ready to take part in an enterprise's administrative, management or supervisory body or who already do so;
 - h) shareholders standing ready to be actively involved in the company or who already are; or
 - i) persons who have belonged to any of the categories above and accessed or collected the information during their time in the activities;
3. 'operators': in the private sector, a physical or legal person; in the public sector, a central government administrative authority, a court or a municipality; and
4. 'follow-up': a matter consisting of:
- a) receiving a report via an internal or external reporting channel and maintaining contact with the reporting person;
 - b) in some other way receiving a report intended for the reporting channels within a public authority that is obliged to maintain external reporting channels, and transferring it to someone who responsible for receiving the report;
 - c) taking measures to assess the correctness of the assertions made in the report;
 - d) communicating information about the investigated assertions for further measures; and
 - e) providing feedback on follow-up to the reporting person.

Chapter 2 – Protection in the form of exemption from liability

Section 1

A reporting person cannot be held liable for breach of [duty of] confidentiality, provided that, at the time of reporting, the person had reasonable cause to assume that reporting the information was necessary in order to reveal the reported irregularity.

Exemption from liability under the first paragraph does not apply in cases of:

- 1. intentional breach of a duty of confidentiality that, under the Public Access to Information and Secrecy Act (2009:400), limits the right to report and publicly disclose information under the Freedom of the Press Act or the Fundamental Law on Freedom of Expression; or
- 2. breach of duty of confidentiality under the Defence Inventions Act (1971:1078).

Section 2

Exemption from liability under Section 1 does not entail a right to disclose documents.

Section 3

A reporting person must not be held liable for breaches of provisions concerning the gathering of information if, when the information was gathered, the person had reasonable cause to assume that such gathering was necessary to expose an irregularity.

Section 4

The exemption from liability under Section 3 does not apply if the reporting person commits an offence by gathering the information.

Chapter 3 Protection against obstructive measures and retaliation

Prohibition of obstructive measures and retaliation

Section 1

An operator must not:

1. obstruct or attempt to obstruct reporting; or
2. retaliate, because of reporting, against:
 - a) a reporting person;
 - b) anyone involved with the operator who assists the reporting person with the reporting, such as an elected representative or a safety representative;
 - c) anyone involved with the operator who is associated with the reporting person, such as a relative or colleague; or
 - d) a legal person that the reporting person owns, works for or is otherwise associated with.

Section 2

An operator must not take retaliatory action because someone consults their employee organisation for advice on reporting. The operator must also refrain from obstructing or attempting to obstruct such consultation.

Exemptions from protection in the event of an offence

Section 3

A person who commits an offence by reporting or collecting information is not protected against retaliation.

Damages

Section 4

An operator that violates any of the prohibitions of obstructive measures or retaliation must pay damages for the loss incurred or for the harm caused by the infringement.

If legal action is taken on the basis of notice of termination, summary dismissal or any other procedure covered by the Employment Protection Act (1982:80), compensation for losses in respect of the period following the cessation of employment must not, under any circumstances, exceed the amount specified in Section 39 of the same Act.

Where reasonable, damages may be reduced in whole or in part.

Burden of proof

Section 5

If a person who considers that they have been obstructed from reporting, subjected to an attempt to obstruct reporting or subjected to retaliation in violation of this Act demonstrates circumstances from which it may be presumed that this is the case, it is up to the respondent to demonstrate that such measures were not taken.

Arbitration agreement

Section 6

If an agreement was concluded prior to [the occurrence of] a dispute that the dispute will be settled by arbitrators without reservation of the right of the parties to challenge the arbitral award, that agreement cannot be asserted in disputes under this Act.

Legal proceedings

Section 7

A case under Sections 1 and 2 is processed in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371), even if the case concerns:

1. a person enquiring about or applying for work;
2. a person applying for or carrying out volunteer work;
3. a person applying for or completing a traineeship;
4. a person otherwise carrying out or standing ready to carry out work under an operator's supervision and direction; or
5. a person who has belonged to one of the categories above and has accessed the information during their time in the activities.

In such cases, persons under the first paragraph, points 1–5 are also considered employees. The operator is considered to be an employer. This also applies when the provisions on negotiations concerning disputes in the Employment (Co-determination in the Workplace) Act (1976:580) are applied.

Time limits and statutory limitation

Section 8

In cases referred to in Section 7, the following provisions of the Employment (Co-determination in the Workplace) Act (1976:580) apply:

- Section 64 concerning time limits for calling negotiations;
- Section 65 concerning time limits for bringing legal action;
- Section 66 concerning extended time limits for a person who is not represented by an employee organisation, albeit that the time limit referred to in the first sentence of Section 66, first paragraph will be two months; and
- Section 68 concerning forfeiture of the right to bring an action on the grounds that it is time-barred.

If the action concerns compensation on grounds of an employment decision announced by an employer in the public sector, the time limits specified in the first paragraph are calculated from the date on which the employment decision gained legal force.

Chapter 4 Conditions for enjoying protection

Section 1

The protection under Chapters 2 and 3 applies provided that:

1. the irregularities occur in activities referred to in Section 2;
2. at the time of reporting, the reporting person had reasonable cause to assume that the information concerning the irregularities was true, in accordance with Section 3; and
3. the reporting takes place internally, externally or through public disclosure in accordance with Sections 4–9.

Where the irregularities occur

Section 2

The protection applies to reporting of irregularities that have occurred or will most likely occur in:

1. the activities in which the reporting person is, has been or may become actively involved; or
2. other activities with which the reporting person has or has had contact through their work.

Reasonable cause to assume that the information is true

Section 3

The protection applies if, at the time of reporting, the reporting person had reasonable cause to assume that the information concerning the irregularities was true.

Protection in connection with internal reporting

Section 4

The protection applies if the reporting takes place via internal reporting channels in accordance with Chapter 5.

Section 5

The protection also applies if someone reports internally in a way other than via internal reporting channels, if:

1. such channels are lacking, or if the available channels and procedures do not meet the requirements under this Act; or
2. the reporting takes place before the person has begun working in the organisation.

Protection in connection with external reporting

Section 6

The protection applies if the reporting takes place to a public authority via external reporting channels in accordance with Chapter 6.

Section 7

The protection also applies if the reporting person reports externally to a public authority in a way other than via external reporting channels, provided that the person:

1. has first reported internally in accordance with this Act without:
 - a) the recipient having taken reasonable follow-up measures in response to the reporting; or
 - b) the recipient having, to a reasonable extent, left feedback on the follow-up within the time limit stated in Chapter 5, Section 8, point 3;
2. has reasonable cause to assume that the irregularity constitutes an imminent or obvious danger to life, health or safety, or entails a risk of extensive damage to the environment, or, for other reasons, has justifiable cause to report to the public authority; or
3. has reasonable cause to assume that reporting internally would entail a risk of retaliation or result in the irregularity not being effectively addressed.

Section 8

The protection also applies to reporting of irregularities in accordance with the second paragraph of Chapter 1, Section 2 to any of the EU institutions, bodies and offices that have established external reporting channels and procedures to receive reports concerning irregularities, provided that the reporting person reports according to the procedures that apply for the relevant reporting channel.

Protection in connection with public disclosure

Section 9

The protection also applies to public disclosure of information, provided that the reporting person:

1. has [first] reported externally in accordance with this Act without:
 - a) the recipient having taken reasonable follow-up measures in response to the reporting; or
 - b) the recipient having, to a reasonable extent, provided feedback on the follow-up within three months of receiving the report or, if there are special grounds, six months, and the reporting person has been informed of the reasons for extending the time limit;
2. has reasonable cause to assume that the irregularity constitutes an imminent or obvious danger to life, health or safety, or entails a risk of extensive damage to the environment, or, for other reasons, has justifiable cause to publicly disclose the information; or
3. has reasonable cause to assume that reporting externally would entail a risk for retaliation or result in the irregularity not being effectively addressed.

Chapter 5 Internal reporting channels and reporting and follow-up procedures

Relationship between these provisions and other regulations

Section 1

If another act or ordinance that implements or complements an EU legal act listed in Part II of the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council contains provisions concerning the provision of internal reporting channels and reporting and follow-up procedures that deviate from the provisions in this Chapter, those provisions apply.

If such other regulations lack corresponding provisions, however, the provisions of this Chapter and Chapters 7–9 supplement the other regulations.

Obligation to have channels and procedures in place

Section 2

An operator that had 50 or more employees at the start of the calendar year is obliged to have internal reporting channels and reporting and follow-up procedures in place.

Shared channels and procedures

Section 3

Operators in the private sector that had between 50 and 249 employees at the start of the year may share internal reporting channels and reporting and follow-up procedures with each other.

The procedures that may be shared are:

1. receipt of reports; and
2. investigation of circumstances that have been reported, which does not, however, include contact with the reporting person.

Section 4

Municipalities may share internal reporting channels and reporting and follow-up procedures with other municipalities, and with municipal companies, foundations and organisations that are also subject to the obligation to have channels and procedures in place.

Obligation to appoint competent persons or departments

Section 5

An operator under Section 2 must appoint independent and autonomous persons or departments to be competent to do the following on behalf of the operator:

1. receive reports and have contact with reporting persons;
2. follow up what has been reported; and
3. provide feedback on the follow-up to reporting persons.

Those who are appointed may be employed by either the operator or a party appointed to manage the reporting channels and procedures on the operator's behalf.

Documentation of channels and procedures

Section 6

The operator must document its internal reporting channels and procedures in writing.

Design of channels and procedures

Section 7

The operator must make its internal reporting channels accessible so that the following actively involved people can report irregularities that arise in its activities:

1. employees;
2. volunteers;
3. trainees;
4. people who otherwise carry out work under the operator's control and management;
5. self-employed persons;
6. persons who are part of the enterprise's administrative, management or supervisory body, if the operator is an enterprise; and
7. shareholders who are actively involved in the company if the operator is a limited company.

Section 8

The operator must design its internal reporting channels and reporting and follow-up procedures so that the reporting person:

1. can report either in writing or orally, and, if requested, in a physical meeting within a reasonable time;
2. receives confirmation that the report has been received within seven days of receipt, unless the reporting person has declined confirmation, or the recipient has reason to assume that a confirmation would reveal the person's identity;
3. receives, to a reasonable extent, feedback on the measures taken to follow up the report and the reasons for these measures within three months of the confirmation or, if no confirmation has been given and this is not due to the reporting person, seven days from receipt; and
4. where relevant, is informed that information that might identify the reporting person is to be disclosed, unless informing them would obstruct or impede the aim of the follow-up or measures.

Information that operators must provide

Section 9

The operator must provide clear and easily accessible information concerning:

1. how reporting is to take place via the internal reporting channels;
2. how reporting to competent authorities is to take place via the external reporting channels and, where appropriate, to EU institutions, bodies or offices; and
3. the right to report information and the right to procure information, and, in

activities where it is applicable, the prohibitions of seeking to identify sources and of retaliation.

Obligation to provide information in the public sector

Section 10

If, in the course of processing a follow-up case at a public authority, it is determined that there are grounds for another public authority or another department within the public authority to take further measures based on what has emerged in the case, the information that is necessary to allow such measures to be taken is provided to the other public authority or department.

Chapter 6 External reporting channels and reporting and follow-up procedures

Section 1

Any public authority that the government appoints as the competent authority in a particular area of responsibility is obliged to:

1. have external reporting channels and reporting and follow-up procedures in place; and
2. receive, follow up and provide feedback on reports concerning irregularities in its area of responsibility.

Pursuant to Chapter 8, Article 7 of the Instrument of Government, the Government may issue more detailed regulations on the obligations of public authorities appointed as competent authorities.

Chapter 7 Processing of personal data

Scope of the provisions

Section 1

The provisions of this Chapter apply to the processing of personal data in follow-up cases.

The provisions only apply to wholly or partly automated processing of personal data and other processing of personal data that is or will be included in a register.

Relationship with other regulations

Section 2

The provisions supplement Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Unless otherwise follows from this Act or regulations issued in connection with it, the Act containing supplementary provisions to the EU General Data Protection Regulation (2018:219) and regulations issued in connection with that Act apply to the processing of personal data under this Act.

Purposes of processing of personal data

Section 3

Personal data must only be processed if the processing is necessary in a follow-up case.

The Government or the public authority designated by the Government may, pursuant to Chapter 8, Article 7 of the Instrument of Government, issue regulations concerning limitations on the purposes of processing and on what personal data may be processed for a particular purpose.

Section 4

Personal data processed for the purpose outlined in Section 3 may also be processed for the provision of information that:

1. is necessary to enable measures to be taken based on what has emerged in a case;
2. is necessary to enable reports to be used as evidence in legal proceedings; or
3. takes place in compliance with an acts or ordinance.

Section 5

Personal data processed for the purpose outlined in Section 3 may also be processed for other purposes, provided that the data is not processed in a way that is incompatible with the purpose for which the data was collected.

Access to personal data

Section 6

Only persons who have been appointed as competent, or persons who work in departments that have been appointed as competent, to receive, follow up and provide feedback on reports may access personal data processed in a follow-up case. Access to personal data must be limited to what each individual needs in order to perform their duties.

Maximum period for processing of personal data

Section 7

Personal data that is manifestly not relevant to the processing of a particular report must not be collected, and must be deleted as soon as possible if collected by mistake.

Section 8

Personal data in a follow-up case must not be processed for longer than two years after the case has been closed.

The provision in the first paragraph does not prevent a public authority from archiving and storing public documents, or the submission of archived material to an archive authority.

Chapter 8 Documentation, preservation and deletion of reports

Documentation of oral reporting

Section 1

Any party that is obliged to have internal or external reporting channels and reporting and follow-up procedures in place, and that receives oral reports must document the reporting by means of a recording that can be stored in a durable and retrievable form or by drafting minutes.

If the oral reporting takes place by means other than in a physical meeting, the documentation obligation may also be fulfilled through a transcript of the recording or in some other suitable way.

Section 2

The reporting may only be recorded with the consent of the reporting person.

Section 3

The reporting person must be given the opportunity to check, rectify and approve a transcript or minutes by signing them.

Preservation and deletion of reports in the private sector

Section 4

An operator in the private sector that is obliged to have internal reporting channels and reporting and follow-up procedures in place must keep written reports and documentation of oral reporting for as long as necessary, but no longer than two years after a follow-up case has concluded.

Documentation and preservation by a third party

Section 5

An operator's documentation of oral reports and preservation of reports in accordance with Section 4 may be carried out by a third party that has been engaged to manage the internal reporting channels and reporting and follow-up procedures on behalf of an operator.

Chapter 9 Duty of confidentiality

Section 1

A person who processes follow-up cases must not, without authorisation, divulge information that could reveal the identity of the reporting person or any other person involved in the case.

Section 2

In public sector activities, the Public Access to Information and Secrecy Act (2009:400) applies instead of Article 1.

Chapter 10 Supervision

Section 1

The public authority or authorities that the Government appoints as a supervisory authority must ensure that the operator complies with the Act's provisions on internal reporting channels and reporting and follow-up procedures.

An operator's obligation to provide information

Section 2

Operators who are subject to supervision must, at the request of a supervisory authority, provide any information and documents needed for the supervision.

Injunctions

Section 3

A supervisory authority may impose any injunctions necessary to ensure that the operator fulfils their obligation to provide information or that the operator fulfils the requirements on internal reporting channels and reporting and follow-up procedures.

Section 4

A decision to impose injunctions may be combined with a financial penalty.

Appeals against decisions of a supervisory authority

Section 5

A decision of a supervisory authority to impose an injunction combined with a financial penalty may be appealed to a general administrative court. Other decisions by supervisory authorities pursuant to this Act cannot be appealed.

Leave to appeal is required for an appeal to the administrative court of appeal.

Transitional provisions

2021:890

1. This Act enters into force on 17 December 2021.
2. The provisions of Chapter 5 apply as of:
 - a) 17 December 2023 for operators in the private sector that have between 50 and 249 employees; and
 - b) 17 July 2022 for other operators.
3. This Act repeals the Act on special protection for workers against retaliation for whistleblowing concerning serious irregularities (2016:749).
4. However, the repealed Act continues to apply to retaliatory action taken prior to this Act's entry into force.