

	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 1/8</p>
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Whistleblowers

This section refers to the dedicated page on “Whistleblowers” available on the public website of the Inspectorate of Labour and Mines (hereinafter “ITM”).

In accordance with the Law of 16 May 2023 transposing 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 (hereinafter “the whistleblower(s)”) in a professional context, (hereinafter “the Law”), ITM has been designated as the competent authority to receive report as part of the performance of its missions, with 21 other competent authorities as part of the performance of their missions:

- The Financial Sector Supervisory Commission (Commission de surveillance du secteur financier – CSSF)
- The Supervisory Authority for the Insurance Sector (Commissariat aux assurances – CAA)
- The Competition Authority (Autorité de la concurrence)
- The Registration Duties, Estates and VAT Authority (Administration de l’enregistrement, des domaines et de la TVA – AED)
- The National Commission for Data Protection (Commission nationale pour la protection des données – CNPD)
- The Centre for Equal Treatment (Centre pour l’égalité de traitement – CET)
- The Mediator as part of his (her) duty of external monitoring of places for people deprived of their liberty
- The Ombudsman for children and youth (Ombudsman fir Kanner a Jugendlecher)
- The Luxembourg Regulatory Institute (Institut luxembourgeois de régulation – ILR)
- The Luxembourg Independent Audiovisual Authority (Autorité luxembourgeoise indépendante de l’audiovisuel – ALIA)
- The Luxembourg Bar Association and the Diekirch Bar Association (Ordre des avocats du Barreau de Luxembourg et l’Ordre des avocats du Barreau de Diekirch)
- The Chamber of Notaries
- The Medical Board (Collège médical)
- The Nature and Forest Agency (Administration de la nature et des forêts – ANF)
- The Water Management Agency Administration de la gestion de l’eau – AGE)
- The Air Navigation Administration (Administration de la navigation aérienne – ANA)

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	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 2/8</p>
---	-------------------------	---------------------------------------

- The National Service of the Mediator of Consumption (Service national du Médiateur de la consommation)
- The Order of Architects and Consulting Engineers (Ordre des architectes et des ingénieurs-conseils – OAI)
- The Order of Chartered Accountants (Ordre des experts-comptables – OEC)
- The Institute of Statutory Auditors (Institut des réviseurs d’entreprises – IRE)
- The Tax Authority (Administration des contributions directes – ACD)

Protection of whistleblowers

For the purposes of carrying out the missions entrusted to ITM by law, which are listed under the “Objective” section of the dedicated “Whistleblowers” page, and more precisely concerning the processing of reports, ITM may be required to process personal data concerning you.

For more information, you can access our Privacy Policy available on our website.

Due to the specificity of the processing and the risks for the persons involved, the protection of personal data concerning you is of the utmost importance.

A “**person concerned**” within the meaning of the Law means a natural or legal person who is referred to in the report as a person to whom the breach is attributed or with whom that person is associated.

a. Data controller

As a public authority and one of the competent Authorities for processing reports, ITM is required to respect the obligations incumbent upon it in its capacity as data controller.

b. Purposes and legal basis of the processing

ITM can be contacted by any whistleblower wishing to make an external reporting outside his (her) company.

Personal data are processed by ITM as part of the performance of the tasks entrusted to it listed above.

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	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 3/8</p>
---	-------------------------	---------------------------------------

In this context, the processing of personal data concerning you is necessary:

- for compliance with a legal obligation to which ITM is subject;
- the performance of a mission in the public interest or relating to the exercise of official authority vested in ITM (Article 6(1)(c) and (e) of the GDPR).

With regard to whistleblowing, data are processed in order to:

- collect and process alerts or reports aimed at reporting a breach of a specific rule;
- carry out the necessary verifications, investigations and analyses;
- define how the report is to be followed up;
- ensure the protection of the persons concerned;
- ensure the protection of the various stakeholders (reporting persons, facilitators, people mentioned or targeted in the alert) against the risk of retaliation;
- allow to establish, exercise and defend the rights in court.

The information collected as part of an alert cannot be re-used to pursue another objective that might be incompatible with the purposes mentioned above.

c. Type of data collected and channels of transmission

Sensitive information and personal data relating to the categories of people mentioned under the “Who is concerned?” section of the page dedicated to “Whistleblowers” are transferred to ITM via the channels mentioned under the “External reporting” section of that page dedicated to “Whistleblowers”.

If ITM establishes that these persons or third parties are not involved in the reported infringement, it will terminate the processing of their data.

ITM may be required to process data transferred to it by one of the competent authorities listed above.

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	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 4/8</p>
---	-------------------------	---------------------------------------

d. Data processed

ITM may process the following categories of personal data:

- Data relating to identification (for example, forename, surname, pseudonym, email address);
- Professional data (e.g. position, company);
- Administrative data (e.g. identity document, date of birth, gender, language);
- Work-related data (e.g. timesheets);
- Data regarding the personal environment (e.g. characteristics, habits, social media information);
- Financial data (e.g. salary slips);
- Digital data (e.g. connections, IP address);
- Biometric data (e.g. images and/or sounds, videos);
- Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;
- Health data.

e. Categories of recipients

Recipients

ITM staff members as well as job seekers in paid temporary employment (OTI) or working under an employment-support contract (CAE) employed at ITM are required to respect professional secrecy and process any reports in strict compliance with confidentiality as to the identity of the whistleblower.

By way of derogation from the foregoing paragraph, ITM may be required to disclose the identity of the whistleblower.

In any such case, ITM will inform the whistleblower, unless such information would jeopardise the related investigations or judicial proceedings .

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	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 5/8</p>
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In addition to the persons concerned themselves, the potential recipients or categories of recipients are as follows:

- Subcontractors (in particular CTIE) and further sub-contractors such as IT suppliers (for example Microsoft);
- Other competent authorities;
- Other public authorities.

When ITM receives a whistleblower report which does not constitute reporting of an infringement of relevant EU law but nevertheless concerns other missions incumbent upon it, the information contained therein is brought to the attention of its competent departments and its general data protection criteria apply.

Information received via infringement reports may be transmitted by the ITM to the competent national authorities if (i) the reports contain information that is relevant to and necessary for the performance of the tasks of those authorities and (ii) the information relates to the system and internal controls of a competent entity.

Potential recipients

In the event that the report does not fall within the area of competence of ITM, the latter transmits the report confidentially and securely (via a one-time link) to the competent authority within a reasonable time. ITM immediately informs the reporting person of this transmission.

If a report sent to the ITM is the subject of an investigation concerning the alleged facts, the staff members, depending on their subject-matter (for example work accident, posting of employees), transmit the report to the competent departments within ITM.

f. Security of processing

ITM takes all necessary precautions with regard to the risks presented by the processing of reports to preserve the security of personal data and, in particular at the time of their collection, during their

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	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 6/8</p>
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transmission and storage, in order to prevent them from being distorted, damaged or accessed by unauthorised third parties.

ITM implements effective information security protection mechanisms to ensure data confidentiality:

- **For data in transit:** reporting channels are designed, established and managed to ensure the completeness, integrity and confidentiality of the information and of the identity of the whistleblower and of any third parties mentioned in the report and which prevent access to those channels by unauthorised members of staff.
- **For archived data:** ITM archives the reports received, in compliance with confidentiality requirements. Personal information is stored securely.

ITM staff members responsible for processing reports receive specific training for the purposes of processing reports, aimed in particular at guaranteeing the confidentiality of the whistleblower.

g. Rights of persons concerned

In order to exercise your rights, please consult the Privacy Policy available on our website.

h. Data retention Period

Personal data will be kept in a form allowing the identification of the persons concerned for a period not exceeding that necessary for each of the purposes for which they were collected, notwithstanding automatic IT back-ups and the legal and regulatory archiving obligations to which ITM is subject.

If a procedure is initiated, the retention of the data lasts until all channels of appeal have been extinguished.

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	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 7/8</p>
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i. Archiving of reports

Archiving in the public interest is done in accordance with the Law of 17 August 2018 relating to the archiving of data,¹.

j. Data transfer

The transfer of personal data is only justified when it is necessary for the legitimate execution of missions falling within the competence of the Office for Whistleblowers or the jurisdiction of the recipient (e.g. a national court or competent authority).

k. Whistleblowing Office

Whistleblowers can receive confidential advice from the Whistleblowing Office .

After examination, ITM contacts the Whistleblowing Office, which may impose an administrative fine upon natural and legal persons:

- Who obstruct or attempt to obstruct a report;
- Who refuse to provide the information that ITM deems necessary, or provide incomplete or false information;
- Who undermine the confidentiality enjoyed by whistleblowers;
- Who refuse to remedy the breach ascertained;
- Who do not establish channels and procedures for internal reporting and follow-up thereof.

If the infringement is proven and the employer has not regularised the situation, ITM will transmit the file to the Whistleblowing Office, without disclosing the identity of the reporting person.

The Whistleblowing Office may impose an administrative fine of between EUR 1,500 and EUR 250,000 upon natural and legal persons.

¹.

	<h1>Whistleblowers</h1>	<p>Version V001.0</p> <p>Page 8/8</p>
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Contact details for the Whistleblowing Office:

Ministère de la Justice (Ministry of Justice)
 13 rue Erasme-Centre administratif Pierre Werner,
 L-1468 Luxembourg,
 Telephone (+352) 247-84537,
<https://mj.gouvernement.lu/fr/dossiers/2023/lanceurs-d-alert.html>
 e-mail: ods.info@mj.etat.lu

I. Other information

Legal references

- Law of 16 May 2023 transposing 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.
- 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 (GDPR);
- Law of 1 August 2018 on the organisation of the National Commission for Data Protection and implementing the GDPR and repealing Directive 95/46/EC (General Data Protection Regulation), amending the Labour Code and the amended Law of 25 March 2015 establishing the salary regime and the conditions and terms of advancement of State officials.

Additional information

- Protection of whistleblowers on Guichet.lu

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