

# EU WHISTLEBLOWING DIRECTIVE

Where are we now and impact on  
global employers

February 2, 2022

9am EST | 2pm GMT | 3pm CET

Grow | **Protect** | **Operate** | Finance

# Welcome

## Today's Speakers



**Purvis Ghani**

Global Chair Employment  
and Labor Practice  
London, United Kingdom



**Diego Pol**

Co-Chair Europe  
Compliance Practice  
Barcelona, Spain



**Jennifer Park**

Shareholder  
Pittsburgh, United States



**Sarah Jackman**

Counsel  
Glasgow, United Kingdom



**Johanne Boelhouver**

Senior Associate  
Amsterdam, Netherlands

# Agenda

- **An overview of the Directive**
- **Update on implementation**
- **Impact for employers**
- **Does the EU Directive impact on multinational employers outside of the EU?**
- **How can Dentons help?**
- **Q&A**



# Poll

## How prepared are you for the Directive?

- a) Well prepared
- b) Preparations are underway
- c) No action taken as yet
- d) Directive does not apply to my organization

The background of the slide features a close-up, artistic photograph of a dandelion seed head. The seeds are shown in various stages of dispersal, with some still attached to the central core and others floating away, their fine, white, feathery pappi catching the light. The overall color palette is muted, with soft blues and greys. Overlaid on the left side of the image is a large, solid blue shape that tapers to a point on the right, resembling a stylized arrow or a speech bubble tail. This shape serves as a background for the main title text.

# **Overview of the EU Directive**

# Overview of the EU Directive

*Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law*

- Transposition into national legislation by December 17th, 2021.
- **Companies with more than 50 employees (\*)** and legal entities in the public sector must implement whistleblowing channels.
- **Broad scope** (“breaches of Union law”) including public tendering, financial services, money laundering prevention and public health.
- **Guarantees to protect whistleblowers from retaliation.** Reversal of the burden of evidence in relation to possible retaliatory measures.
- **Obligation to respond within 7 days and follow-up on reports, generally within 3 months.**

*(\*) Companies with 50-249 employees are not obligated until 2023.*

# Overview of the EU Directive

## Key provisions

**OBLIGATION TO  
ESTABLISH INTERNAL  
REPORTING CHANNELS**

**EXTERNAL REPORTING  
AND PUBLIC  
DISCLOSURES**

**GOOD FAITH**

**RECORD KEEPING OF  
REPORTS**

**NON-RETALIATION  
(broad concept and  
personal scope)**

**SECURITY AND NON-  
AUTHORIZED ACCESS**

**CONFIDENTIALITY /  
ANONIMITY**

The background features a close-up, artistic shot of dandelion seeds with their delicate, feathery parachutes. The image is in a cool, blue-toned color palette. A large, solid blue shape, resembling a stylized arrow pointing to the right, is overlaid on the left and center of the image. The text is centered within this blue shape.

# **Update on implementation**

# Latest on implementation

- A vast majority of EU-countries either took a last-minute approach in drafting and debating proposed laws. In fact, most countries missed the December 17, 2021 deadline:



## Local legislation implemented

Portuguese law is published and due to come into force around June 2022. The proposed effective date for Slovakia is May 2022, but the provisions are still subject to change.



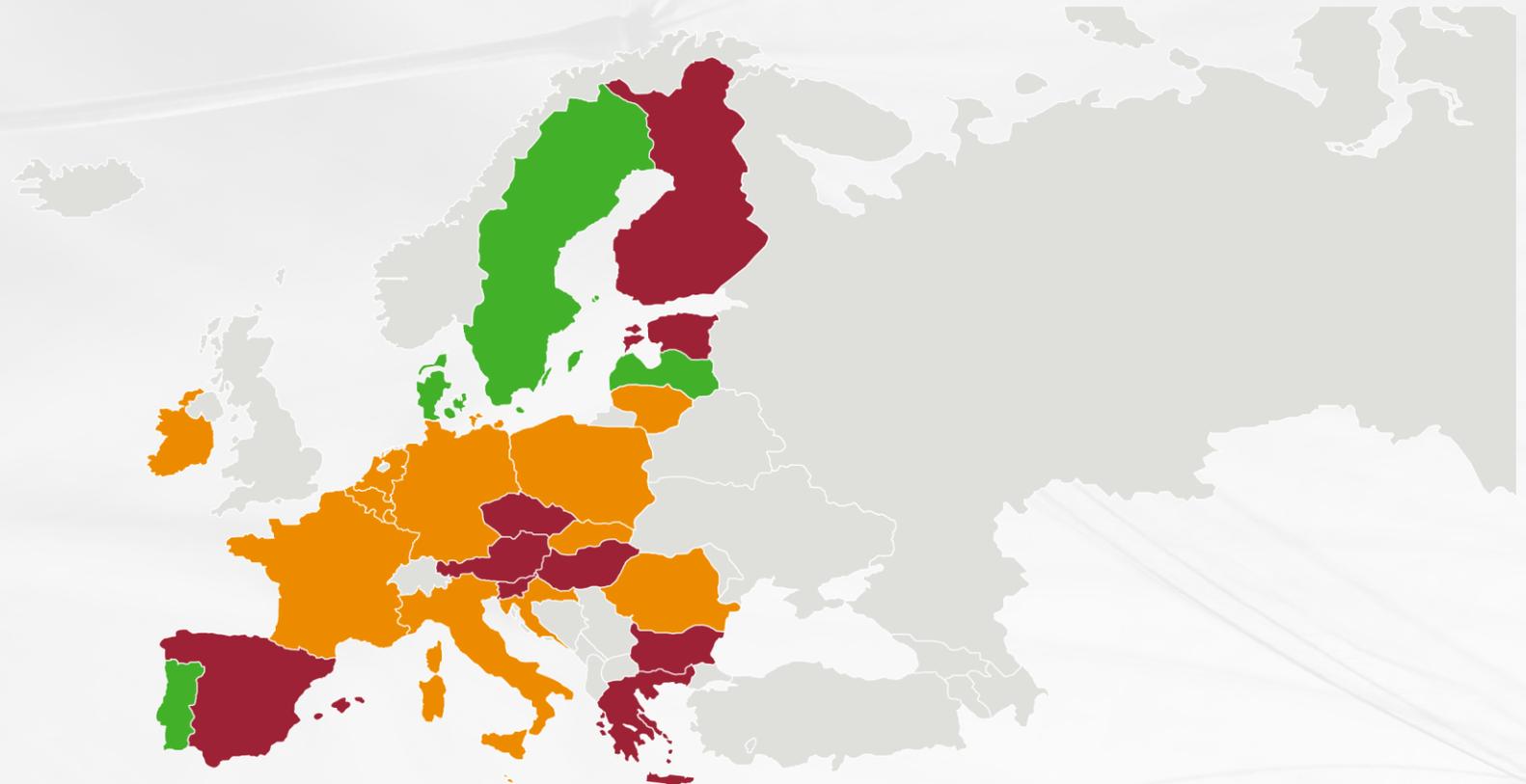
## Bill is pending

Road to transposition differs per country. The proposed effectiveness for Slovakia is May 2022, but still subject to changes. For other countries the exact timing of the remainder of the legislative process is unknown at this stage.



## No draft law submitted (yet)

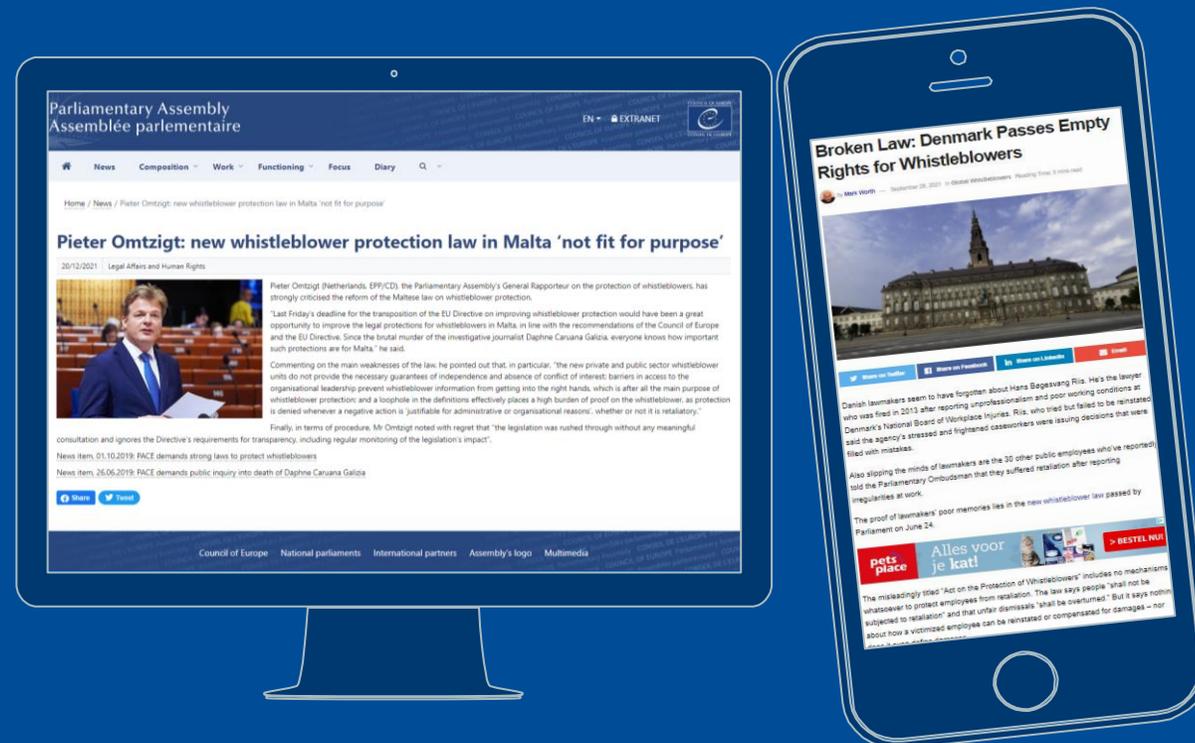
Some countries are working on draft legislation, but others have not yet started (e.g. Hungary, Austria).



# Latest on implementation

## Issues and criticism

- No clear boundaries on *what* to report:
  - The Directive sets out minimum requirements: member states can apply a higher degree of protection e.g. by covering breaches of national law (e.g. Denmark, Sweden, France and Romania).
- Or *who* may report (entity's workers OR other individuals in the context of their work-related activities).
- Criticism:



The background features a close-up, artistic shot of dandelion seeds with their delicate, feathery parachutes. The image is in a cool, blue-toned color palette. A large, solid blue arrow shape points from the left side of the frame towards the right, serving as a backdrop for the text.

# **Impact for EU employers**

# Impact for EU employers

## Practical challenges

- Classification of reports
- A variety of channels depending on jurisdiction
- Ready for oral reports
- Follow-up by “*the most appropriate person or department*”
- Confidentiality



# Impact for EU employers

The EU Commission's stand – what to do now?

## Article 8

### Obligation to establish internal reporting channels

1. Member States shall ensure that legal entities in the private and public sector establish channels and procedures for internal reporting and for follow-up, following consultation and in agreement with the social partners where provided for by national law.

(...)

3. Paragraph 1 shall apply to legal entities in the private sector with 50 or more workers.



# Impact for EU employers

## The EU Commission's stand – what to do now?

“...reporting channels cannot be established in a centralised manner only at group level; all medium-sized and large companies belonging to a group remain obliged to have each their own channels.”

“It could be compatible with the Directive that a **subsidiary company benefits from the investigative capacity of its parent company provided that:**

- 1) the subsidiary company is medium-sized (has 50 to 249 workers);
- 2) reporting channels exist and remain available at the subsidiary's level;
- 3) clear information is provided to the reporting persons as to the fact that a designated person/department at headquarters level would be authorised to access the report (for the purpose of carrying out the necessary investigation), and the reporting person has the right to object to that and to request that the reported conduct is only investigated at the level of the subsidiary;
- 4) any other follow up measure is taken and feedback to the reporting person is given at subsidiary level.”

“**It must remain the whistleblower's choice whether to have his/her report handled only at subsidiary level** (because, for example, s/he suspects the headquarters to be involved in the breach) or not.”



**Adopt alternative local channels (in addition to group-wide)**



**Address concerns raised by EU (plus abide by national laws)**

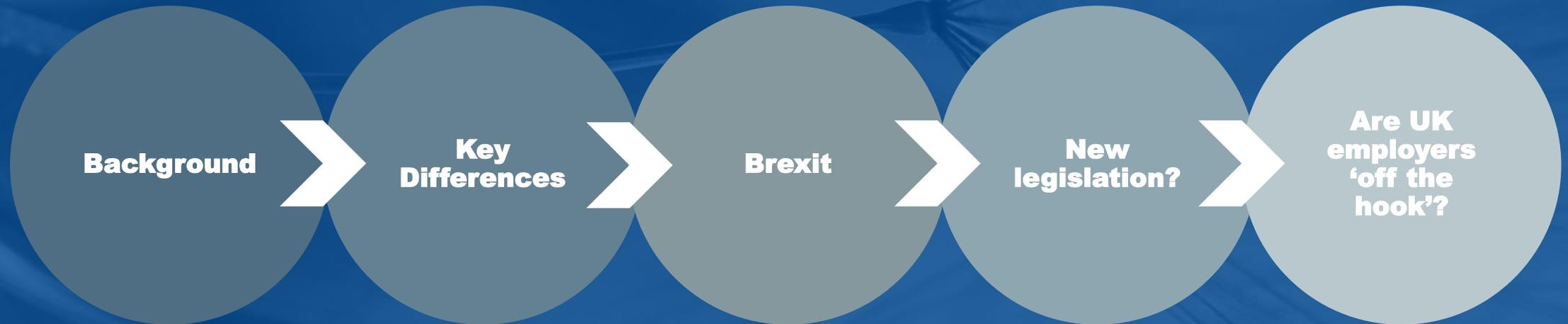


**Wait and see**

The background features a close-up, artistic shot of dandelion seeds with their delicate, feathery parachutes. The image is in a cool, blue-toned color palette. A large, solid blue arrow shape points from the left side of the frame towards the right, serving as a backdrop for the text.

# **Impact for UK employers**

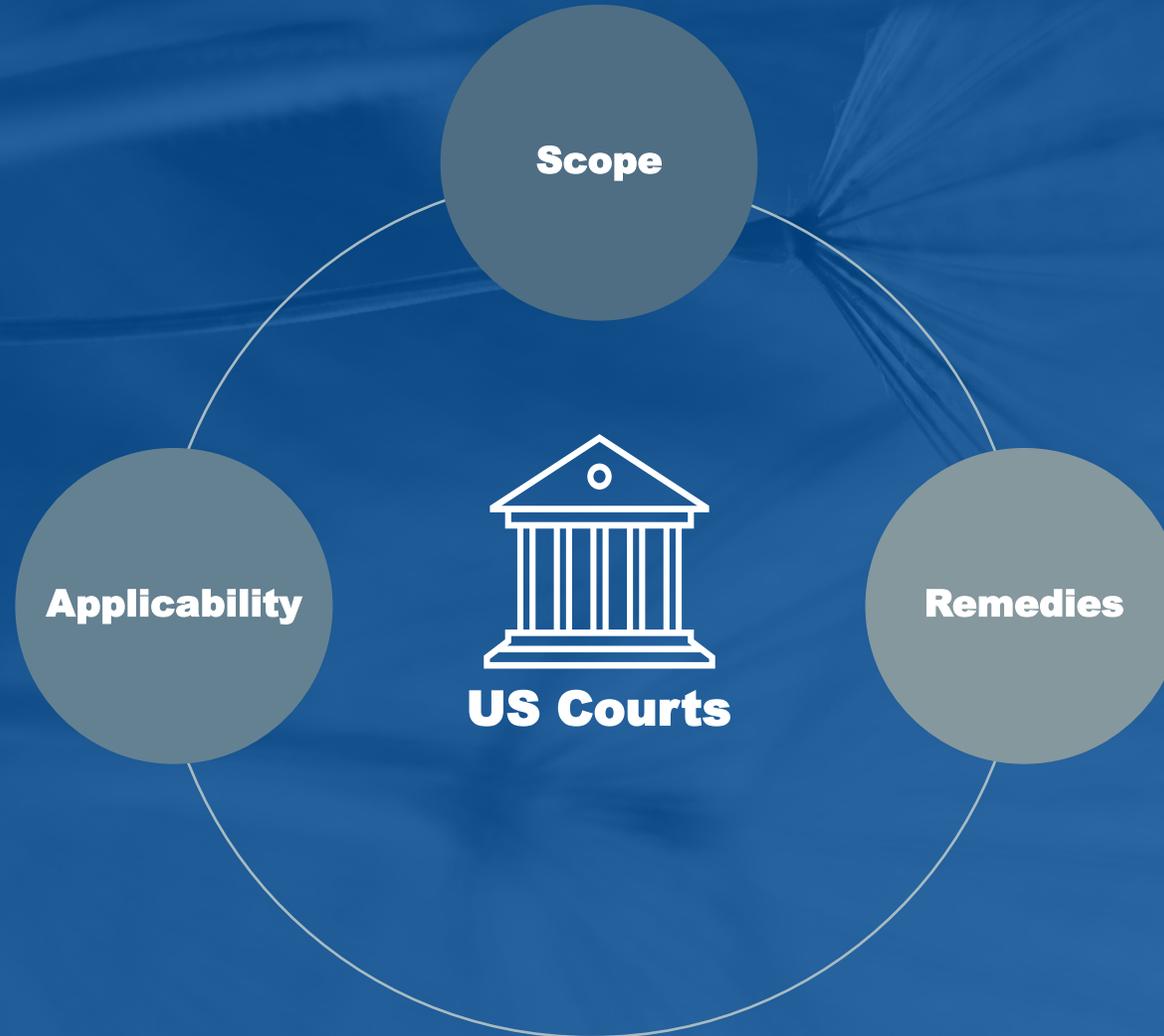
# How will the EU Directive impact the UK?



The background features a close-up, slightly blurred image of a dandelion seed head. The seeds are light-colored and radiate from a central point. A large, solid blue arrow shape points from the left side of the frame towards the right, partially overlapping the dandelion image. The text is centered within this blue arrow.

# **Impact for US employers**

# How will the EU Directive impact the US?





**How can Dentons help?**

# How can Dentons help?

## Whistleblowing Suite of Solutions

**Dentons' Whistleblowing Suite of Solutions** is a complete legal offering, assisting clients in the implementation and management of their Whistleblowing management system.

- 1 Design and set up (or upgrade to) a state-of-the-art whistleblowing system
- 2 Manage the whistleblowing hotline
- 3 Draft and review
- 4 Internal investigations
- 5 Audits and reviews
- 6 Training

### Dentons' Whistleblowing Line

Powered by:  people intouch

A solution tailored to your needs and your Compliance policies.

Protection of independence, anonymity and confidentiality

Advanced technology and maximum security (ISAE3000 Type II, based on ISO 27001 & 27002).

Attorney-client privilege or secrecy in accordance with local applicable laws.

First-class technical and legal support throughout; from design of the system to the management and resolution of reported cases.

Continuous and professional monitoring of the hotline.

# Global Solutions

## Investigations and compliance hub

In this hub we share practical insight to help empower you on your compliance journey, gathered from our collective experience advising clients of many sizes and shapes on their needs to create ethical business cultures.

[Click here to access the Hub](#)

The screenshot shows the Dentons website's 'Investigations and compliance hub'. The navigation bar includes 'Global solutions', 'Featured insights', 'Client experience', and 'Our people'. Below the navigation, there are four main categories: 'Grow', 'Protect', 'Operate', and 'Finance'. The main heading is 'Investigations and compliance', followed by a sub-heading 'Our investigations and compliance team have conducted investigations and defended enforcement actions in 90+ countries. In this hub they share their practical insight to help empower you on your compliance journey. If you would like to know more about how they can help you deliver or build your compliance roadmap, click here.' Below this, there are two featured articles: 'AI Guide: the AI journey—opening eyes to opportunity and risk' and 'Webinar recording Discovering the Top 7 pitfalls to avoid when implementing a Whistleblowing System'. A 'Contact us' button is also visible.

## Dentons Whistleblower Systems

Manage cross-border complexity with this free online comparative tool. Dentons created the “Whistleblower Systems” interactive tool, which is designed to assist you with the requirements of the regulations throughout over 80 countries.

[Click here to access the comparative tool](#)

The screenshot shows the 'Whistleblower Guidelines' comparative tool. The main heading is 'Whistleblower Guidelines' and the sub-heading is 'Comparison of key points in selected jurisdictions'. The tool provides a detailed comparison of key points in selected jurisdictions, including: 'Whistleblower system', 'Common term definitions', 'Applicable Laws', 'Involvement of Employees and Employee Representations', 'Measures avoiding Retaliation against Whistleblowers', 'Involvement of Authorities', 'Limitations on Whistleblower Reports', and 'Language Requirements'. The tool includes a 'Go' button and a 'Reset' button. Below the main content, there is a table comparing the tool across three jurisdictions: Belgium, France, and Spain. The table has columns for 'Applicable Laws', 'Are there any regulations regarding Whistleblower Systems?', and 'Involvement of Authorities'. The table content is as follows:

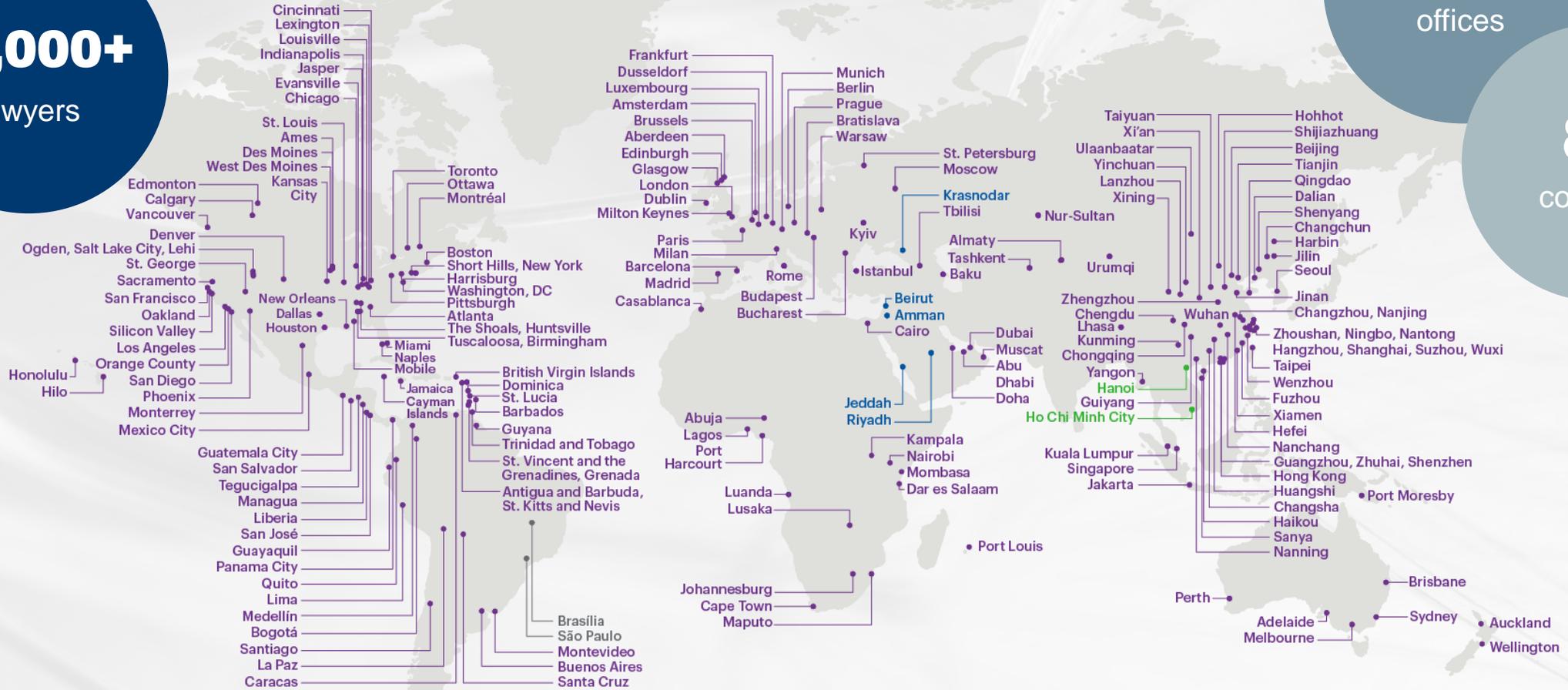
	Belgium	France	Spain
<b>Applicable Laws</b>			
<b>Are there any regulations regarding Whistleblower Systems?</b>	There are no specific regulations regarding Whistleblower Systems. However, there is a general framework law that provides for the reporting of infringements on all legislation of which the compliance is supervised by the Financial Regulator in Belgium and the legislation on anti-money laundering and counter-terrorist financing.	Whistleblower Systems are regulated by - Art. 8 and 17 L01 n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique (Law on transparency, the fight against corruption and the modernization of economic life, also known as Loi Sapin II) - Décret n° 2017-564 du 19 avril 2017 relatif aux procédures de recueil des signalements émis par les lanceurs d'alerte au sein des personnes morales de droit public ou de droit privé ou des administrations de l'Etat (Decree on the procedures for collecting reports disclosed by whistleblowers within legal persons governed by public or private law or state administrations).	Whistleblower Systems are regulated by article 24 of the Spanish Law 3/2018, of December 5 2018, on the Protection of Personal Data and Guarantees of Digital Rights which develops the provisions of the Regulation (EU) 2016/679 and states certain aspects concerning the implementation and management of Whistleblower Systems.
<b>Involvement of Authorities</b>			
<b>Limitations on Whistleblower Reports</b>			
<b>Language Requirements</b>			

# We are where you need us

**12,000+**  
lawyers

**207**  
offices

**82**  
countries



Locations in purple represent Dentons offices.  
 Locations in blue represent associate firms, offices or special alliances as required by law or regulation.  
 Locations in green represent approved combinations that have not yet been formalized.  
 Locations in grey represent Brazil Strategic Alliance.

January 2022

# Thank You



**Purvis Ghani**

Global Chair Employment and  
Labor Practice  
London, United Kingdom  
[purvis.ghani@dentons.com](mailto:purvis.ghani@dentons.com)



**Diego Pol**

Co-Chair Europe Compliance  
Practice, Barcelona, Spain  
[diego.pol@dentons.com](mailto:diego.pol@dentons.com)



**Johanne Boelhouwer**

Senior Associate,  
Amsterdam, Netherlands  
[johanne.boelhouwer@dentons.com](mailto:johanne.boelhouwer@dentons.com)



**Sarah Jackman**

Counsel  
Glasgow, United Kingdom  
[sarah.jackman@dentons.com](mailto:sarah.jackman@dentons.com)



**Jennifer Park**

Shareholder  
Pittsburgh, United States  
[jennifer.park@dentons.com](mailto:jennifer.park@dentons.com)

Dentons is the world's largest law firm, connecting top-tier talent to the world's challenges and opportunities with 20,000 professionals including 12,000 lawyers, in more than 200 locations, in more than 80 countries. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and award-winning client service challenge the status quo to advance client interests.