

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,753, 18 ta' Diċembru, 2021
Taqsimha A

MALTA

ATT Nru LXVII tal-2021

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ACT No. LXVII of 2021

AN ACT enacted by the Parliament of Malta.

ATT sabiex jemenda l-Att dwar il-Protezzjoni ta' Informatur, Kap. 527.

AN ACT to amend the Protection of the Whistleblower Act, Cap. 527.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

18 ta' Dicembru, 2021

ATT Nru LXVII tal-2021

ATT sabiex jemenda l-Att dwar il-Protezzjoni ta' Informatur, Kap. 527.

Il-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2021 li jemenda l-Att dwar il-Protezzjoni ta' Informatur u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Protezzjoni ta' Informatur, hawn aktar 'il quddiem imsejjaħ "l-Att principali".

Titolu fil-qosor
u bidu fis-sehħ.
Kap. 527.

(2) Dan l-Att għandu jidhol fis-sehħ f'dik id-data jew id-dati li l-Ministru għall-Ġustizzja u l-Governanza jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu stabbiliti għal dispożizzjonijiet differenti ta' dan l-Att.

(3) Dan l-Att jittrasponi d-Direttiva (UE) 2019/1937 tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Ottubru 2019 dwar il-protezzjoni ta' persuni li jirrapportaw dwar ksur tal-liġi tal-Unjoni.

Għan.

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Emenda tal-
artikolu 2 tal-
Att prinċipali.

2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat b'dan li ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi emendat b'dan li ġej:

(i) it-tifsira "detriment fuq il-post tax-xogħol" tiegħu għandha tiġi sostitwita b'din it-tifsira ġdida li ġejja:

" "detriment fuq il-post tax-xogħol" tfisser kwalunkwe att jew ommissjoni diretti jew indiretti li jseħħu f'kuntest relatat max-xogħol, li jiġu kkawżati minn żvelar intern jew estern jew minn żvelar pubbliku, u li jikkawżaw jew jistgħu jikkawżaw detriment mhux ġustifikat lill-informatur u jista' jinkludi:

(a) is-sospensjoni, is-sensji, it-tkeċċija jew miżuri ekwivalenti;

(b) id-demozzjoni jew iż-żamma tal-promozzjoni;

(ċ) it-trasferiment tad-dmirijiet, il-bidla fil-lokazzjoni tal-post tax-xogħol, it-tnaqqis fil-pagi, il-bidla fis-sigħat tax-xogħol;

(d) iż-żamma tat-taħriġ;

(e) valutazzjoni tal-prestazzjoni jew referenza tal-impjieg negattiva;

(f) l-impożizzjoni jew l-amministrazzjoni ta' kwalunkwe miżura dixxiplinarja, ċanfira jew penali oħra, inkluż penali finanzjarja;

(g) koerċizzjoni, intimidazzjoni, fastidju jew ostraciżmu;

(h) diskriminazzjoni, trattament żvantaġġjuż jew ingust;

(i) in-nuqqas tat-tibdil ta' kuntratt ta' impjieg temporanju f'wieħed permanenti, fejn il-haddiem kellu aspettativi legittimi li kien se jiġi offrut impjieg permanenti;

(j) in-nuqqas ta' tiġdid, jew terminazzjoni bikrija ta' kuntratt ta' impjieg temporanju;

(k) ħsara, inkluż għar-reputazzjoni tal-persuna, b'mod partikolari fil-midja soċjali, jew telf finanzjarju, inkluż telf ta' negozju u telf ta' dħul;

(l) tniżżil fuq il-lista s-sewda abbażi ta' ftehim formali jew informali tul is-settur jew l-industrija kollha, li jista' jinvolvi li fil-futur, din il-persuna ma ssibx impjieg fis-settur jew fl-industrija;

(m) terminazzjoni bikrija jew kancellazzjoni ta' kuntratt għal oġġetti jew servizzi;

(n) il-kancellazzjoni ta' liċenzja jew permess;

(o) riferimenti psikjatriċi jew mediċi;

(p) li wieħed ikun soġġett għal kwalunkwe azzjoni dixxiplinarja inkluż għal ksur ta' etika jew kunfidenzjalità;

(q) li jiġi soġġett għal terminu jew kondizzjoni tal-impjieg jew irtirar li tinbidel jew tinzamm mibdula bi żvantaġġ għalih:

Iżda li, dan ma għandux japplika fejn l-azzjoni tittieħed fejn l-att jew l-ommissjoni diretti jew indiretti jkunu ġustifikabbli għal raġunijiet organizzattivi mil-lat amministrattiv jew kummerċjali;"

(ii) minnufih wara t-tifsira "*External Whistleblowing Disclosure Unit*" tiegħu għandhom jiġu miżjuda dawn it-tifsiriet godda li ġejjin:

"faċilitatur" tfisser persuna li tassisti persuna li tirrapporta fil-proċess ta' rappurtar f'kuntast relatat max-xogħol, u li l-assistenza tagħha għandha tkun kunfidenzjali;

"feedback" tfisser l-għoti lill-persuna li

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tirrapporta ta' informazzjoni dwar l-azzjoni prevista jew meħuda bħala segwitu u dwar ir-raġunijiet għal dak is-segwitu;"

(iii) il-paragrafu (g) tat-tifsira "impjegat" tiegħu għandu jiġi sostitwit b'dawn il-paragrafi ġodda li ġejjin:

"(g) kwalunkwe kandidat għall-impjieg biss fejn tkun inkisbet informazzjoni dwar Prattiki mhux xierqa matul il-proċess ta' reklutaġġ jew negozjati prekontrattwali oħra;

(h) azzjonisti u persuni li jappartjenu għall-korp amministrattiv, manigerjali jew supervizorju ta' impriża, inklużi membri mhux eżekuttivi, u apprendisti mħallsa jew mhux imħallsa;"

(iv) minnufih wara t-tifsira "informatur" tiegħu għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "informazzjoni dwar Prattiki mhux xierqa" tfisser informazzjoni, inklużi suspetti raġonevoli, dwar Prattiki mhux xierqa attwali jew potenzjali, li seħħew jew li x'aktarx ħafna jseħħu fl-organizzazzjoni li fiha taħdem jew ħadmet il-persuna li tirrapporta jew f'organizzazzjoni oħra li magħha l-persuna li tirrapporta hija jew kienet f'kuntatt permezz ta' xogħolha, u dwar tentattivi biex jinheba dak il-ksur;"

(v) minnufih wara t-tifsira "korp imwaqqaf bil-liġi" tiegħu għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "kuntest relatat max-xogħol" tfisser attivitajiet tax-xogħol attwali jew tal-passat fis-settur pubbliku jew privat li permezz tagħhom, irrispettivament min-natura ta' dawk l-attivitajiet, persuni jiksbu informazzjoni dwar Prattiki mhux xierqa u li fihom dawk il-persuni jistgħu jsofru ritaljazzjoni jekk ikunu rrapportaw dik l-informazzjoni;"

(vi) minnufih wara t-tifsira "persuna" tiegħu għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "persuna kkoncernata" tfisser persuna fizika

jew ġuridika li ssir referenza għaliha fir-rapport jew l-iżvelar pubbliku bhala persuna li lilha tiġi attribwita l-prattika mhux xierqa jew li magħha tkun assoċjata dik il-persuna;"

(vii) it-tifsira "prattiċi mhux xierqa" tiegħu għandha tiġi sostitwita b'din it-tifsira ġdida li ġejja:

" "prattika mhux xierqa" tfisser azzjoni jew serje ta' azzjonijiet fejn:

(a) persuna naqset, qiegħda tonqos jew x'aktarx se tonqos milli tħares kull obbligu legali li tkun soġġetta għalih; jew

(b) is-saħħa jew is-sigurtà ta' kwalunkwe individwu kienet, qiegħda jew x'aktarx ser tkun fil-periklu; jew

(ċ) l-ambjent kellu, għandu jew x'aktarx ser ikollu ħsara; jew

(d) twettqet jew x'aktarx titwettaq jew twettqet Prattika korrotta; jew

(e) reat kriminali seħħ, qiegħed iseħħ jew x'aktarx se jseħħ; jew

(f) nuqqas ta' ġustizzja seħħ, qiegħed iseħħ jew x'aktarx ser iseħħ; jew

(g) tixhim seħħ, jew x'aktarx qiegħed iseħħ jew ser iseħħ; jew

(h) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tikkonforma ma' xi obbligu legali dwar l-akkwist pubbliku li għalih hija soġġetta; jew

(i) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tikkonforma mal-liġijiet dwar is-servizzi finanzjarji, il-prodotti u s-swieq, u l-prevenzjoni tal-ħasil tal-flus u l-finanzjament tat-terroriżmu; jew

(j) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tikkonforma mal-liġi dwar is-sikurezza u l-konformità tal-prodott;

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jew

(k) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tiżgura s-sikurezza tat-trasport; jew

(l) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tiżgura l-protezzjoni mir-radjazzjoni u s-sikurezza nukleari; jew

(m) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tiżgura s-sikurezza tal-ikel u l-għalf, is-saħħa u l-benesseri tal-annimali; jew

(n) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tikkonforma ma' xi obbligu legali dwar il-protezzjoni tal-konsumatur li għalih hija soġġetta; jew

(o) persuna naqset, qed tonqos jew x'aktarx li tonqos milli tikkonforma ma' xi obbligu legali dwar il-protezzjoni tal-privatezza u d-data personali, u s-sigurtà tan-netwerks u tas-sistemi tal-informazzjoni li għalihom hija soġġetta; jew

(p) ksur li jaffettwa l-interessi finanzjarji tal-Unjoni Ewropea kif imsemmi fl-Artikolu 325 tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea (TFUE) u speċifikat aktar fil-miżuri rilevanti tal-Unjoni Ewropea jkun seħħ jew x'aktarx li jseħħ jew li jkun seħħ; jew

(q) ksur relatat mas-suq intern, kif imsemmi fl-Artikolu 26(2) tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea (TFUE), inkluż ksur tar-regoli tal-Unjoni Ewropea dwar il-kompetizzjoni u l-għajnuna mill-Istat, kif ukoll ksur relatat mas-suq intern fir-rigward ta' atti li jiksru r-regoli tat-taxxa korporattiva jew ta' arrangamenti li l-għan tagħhom huwa li jinkiseb vantaġġ tat-taxxa li jegħleb l-għan jew l-iskop tal-liġi dwar it-taxxa korporattiva applikabbli jkun seħħ jew x'aktarx li jseħħ jew li jkun seħħ; jew

(r) informazzjoni li għandha t-tendenza li turi kwalunkwe kwistjoni li taqa' fi hdan kwalunkwe wieħed (1) mill-paragrafi preċedenti, tkun inħbiet, qieghda tinheba jew x'aktarx li tinheba deliberatament:

Izda li, fl-interpretazzjoni ta' din it-tifsira għandha tingħata kunsiderazzjoni xierqa lir-regola *de minimis* sabiex kwistjonijiet minuri jew trivjali hafna ma għandhomx jaqgħu taħt id-dispożizzjonijiet ta' dan l-Att;"

(viii) minnufih wara t-tifsira "prinċipal" tiegħu għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "segwitu" tfisser kwalunkwe azzjoni meħuda mir-riċevitur ta' żvelar jew kwalunkwe awtorità kompetenti, biex jivvalutaw il-preċiżjoni tal-allegazzjonijiet magħmula fir-rapport u, fejn relevanti, biex jindirizzaw il-prattika mhux xierqa rrapportata, inkluż permezz ta' azzjonijiet bħal inkjesta interna, investigazzjoni, prosekuzzjoni, azzjoni għall-irkupru ta' fondi, jew l-għeluq tal-proċedura;"

(ix) minnufih wara t-tifsira "tixhim" tiegħu għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "tiżvela" jew "li tiżvela" tfisser il-komunikazzjoni orali jew bil-miktub ta' informazzjoni dwar Prattika mhux xierqa;" u

(x) fit-tifsira "żvelar protett" tiegħu l-kliem "tkun preskritta." għandhom jiġu sostitwiti bil-kliem "tkun preskritta;" u minnufih wara għandha tiġi miżjuda din it-tifsira ġdida li ġejja:

" "żvelar pubbliku" tfisser żvelar magħmula skont is-Sezzjoni 4 tat-Taqsima III.";

(b) minnufih wara s-subartikolu (3) tiegħu għandhom jiġu miżjuda dawn is-subartikoli godda li ġejjin:

"(4) Fejn regoli speċifiċi dwar ir-rappurtar ta' ksur huma previsti fil-liġijiet speċifiċi għas-settur elenkati fit-Tielet Skeda, daww il-liġijiet għandhom japplikaw. Id-dispożizzjonijiet ta' dan l-Att għandhom ikunu applikabbli

sa fejn kwistjoni ma tkunx irregolata b'mod obligatorju f'dawk il-ligijiet.

(5) Dan l-Att m'għandux jaffettwa l-eżerċizzju mill-ħaddiema tad-drittijiet tagħhom li jikkonsultaw lir-rappreżentanti jew lit-trade unions tagħhom, u dwar il-protezzjoni kontra kwalunkwe azzjoni detrimental mhux ġustifikata mqanqla minn dawk il-konsultazzjonijiet kif ukoll dwar l-awtonomija tal-imsieħba soċjali u d-dritt tagħhom li jidhlu fi ftehimiet kollettivi. Dan huwa mingħajr preġudizzju għal-livell ta' protezzjoni mogħti minn dan l-Att."

Emenda tal-artikolu 4 tal-Att prinċipali.

3. Minnufih wara s-subartikolu (2) tal-artikolu 4 tal-Att prinċipali għandhom jiġu miżjuda dawn is-subartikoli ġodda li ġejjin:

"(3) Il-protezzjoni mogħtija lil informatur għandha, fejn relevanti, tiġi estiża għal:

(a) faċilitaturi;

(b) persuni terzi li huma konnessi mal-persuni li jirrapportaw u li jistgħu jsofru ritaljazzjoni f'kuntest relatat max-xogħol, bħal kollegi jew qraba tal-persuni li jirrapportaw;

(ċ) entitajiet ġuridiċi li l-persuni li jirrapportaw jippossjedu, jaħdmu għal jew huma b'xi mod ieħor konnessi magħhom f'kuntest relatat max-xogħol; u

(d) għajnuna legali fi proċedimenti kriminali u fi proċedimenti ċivili transkonfinali f'konformità mad-dispożizzjonijiet relevanti tal-Kodiċi Kriminali u d-Direttiva 2008/52/KE tal-Parlament Ewropew u tal-Kunsill tal-21 ta' Mejju 2008 dwar ċerti aspetti ta' medjazzjoni f'materji ċivili u kummerċjali u f'konformità mal-liġi nazzjonali, l-għajnuna legali fi proċedimenti ulterjuri u konsulenza legali jew konsulenza legali oħra.

Kap. 9.

(4) L-informatur għandu jkollu aċċess għal:

(a) informazzjoni u pariri komprensivi u indipendenti, li huma faċilment aċċessibbli għall-pubbliku u mingħajr ħlas, dwar proċeduri u rimedji disponibbli, dwar il-protezzjoni mir-ritaljazzjoni, u dwar id-drittijiet tal-persuna kkonċernata;

(b) assistenza effettiva mill-awtoritajiet kompetenti quddiem kwalunkwe awtorità rilevanti involuta fil-protezzjoni tagħhom kontra r-ritaljazżjoni, inkluż, fejn ikun previst mil-liġi nazzjonali, iċ-ċertifikazzjoni tal-fatt li jikkwalifikaw għal protezzjoni taħt dan l-Att; u

(ċ) għajnuna legali fi proċedimenti kriminali u fi proċedimenti ċivili transfruntiera f'konformità mad-Direttiva (UE) 2016/1919 tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ottubru 2016 dwar għajnuna legali għal persuni ssuspettati u akkużati fi proċedimenti kriminali u għal persuni rikjesti fi proċedimenti ta' mandat ta' arrest Ewropew u d-Direttiva 2008/52/KE tal-Parlament Ewropew u tal-Kunsill tal- 21 ta' Mejju 2008 dwar ċerti aspetti ta' medjazzjoni f'materji ċivili u kummerċjali, u f'konformità mal-liġi nazzjonali, għall-għajnuna legali fi proċedimenti ulterjuri u konsulenza legali jew assistenza legali oħra."

4. Minnufih wara s-subartikolu (4) tal-artikolu 6 tal-Att prinċipali għandu jiġi miżjud dan is-subartikolu ġdid li ġej:

Emenda tal-artikolu 6 tal-Att prinċipali.

Kap. 589.

"(5) Kull uffiċjal li jirrapporta dwar żvelar ta' informazzjoni protetta jew Unità dwar rapporti ta' żvelar ta' informazzjoni protetta li tirċievi informazzjoni dwar ksur li tinkludi sigrieti kummerċjali kif imfissra fl-artikolu 2 tal-Att dwar is-Sigrieti Kummerċjali ma għandhiex tuża jew tiżvela dawk is-sigrieti kummerċjali għal skopijiet li jmorru lil hinn minn dak li huwa meħtieġ għal segwitu xieraq."

5. Minnufih wara l-artikolu 6 tal-Att prinċipali għandhom jiġu

Żieda ta' artikoli 6A u 6B għodda fl-Att prinċipali.

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miżjuda dawn l-artikoli godda li ġejjin:

"Proċessar ta' data personali.

Kap. 586.
L.S. 586.08.

6A. Kwalunkwe pproċessar ta' data personali mwettaq skont dan l-Att, inkluż l-iskambju jew it-trasmissjoni ta' data personali mill-uffiċjal li jirrapporta dwar żvelar ta' informazzjoni protetta jew mill-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta, għandu jitwettaq skont ir-Regolament (UE) 2016/679 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' April 2016 dwar il-protezzjoni tal-persuni fiżiċi fir-rigward tal-ipproċessar ta' data personali u dwar il-moviment liberu ta' tali data, u li jhassar id-Direttiva 95/46/KE (Regolament Ġenerali dwar il-Protezzjoni tad-Data), l-Att dwar il-Protezzjoni u l-Privatezza tad-Data u r-Regolamenti dwar il-Protezzjoni tad-Data (Ipproċessar ta' Data Personali minn Awtoritajiet Kompetenti għall-Finijiet tal-Prevenzjoni, l-Investigazzjoni, is-Sejbien jew il-Prosekuzzjoni ta' Reati Kriminali jew l-Eżekuzzjoni ta' Pieni Kriminali):

Iżda li, id-data personali li hija manifestament mhux relevanti għat-trattament ta' rapport speċifiku ma għandhiex tingabar jew, jekk tingabar b'mod aċċidentali, għandha tithassar mingħajr dewmien żejjed.

Żvelar ta' informazzjoni dwar ksur taht dan l-Att.

Kap. 589.

6B. Fejn persuna tiżvela informazzjoni dwar ksur li jaqa' fil-kamp ta' applikazzjoni ta' dan l-Att, u dik l-informazzjoni tinkludi sigrieti kummerċjali, u fejn dik il-persuna tissodisfa l-kondizzjonijiet ta' dan l-Att, dak l-iżvelar għandu jitqies legali skont il-kondizzjonijiet tal-artikolu 5(2) tal-Att dwar is-Sigrieti Kummerċjali."

Emenda tal-artikolu 7 tal-Att prinċipali.

6. Is-subartikoli (4), (5) u (6) tal-artikolu 7 tal-Att prinċipali għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (5), (6) u (7) rispettivament u minnufih wara s-subartikolu (3) tiegħu għandu jiġi miżjud dan is-subartikolu ġdid li ġej:

"(4) Fil-proċedimenti msemmija fis-subartikolu (1), fejn l-informatur jistabbilixxi li għamel żvelar intern, estern jew pubbliku u sofra detriment, għandu jiġi preżunt li d-detriment sar b'ritaljazżjoni għar-rapport jew l-iżvelar pubbliku. F'każijiet bħal dawn, għandu jkun f'idejn il-persuna li tkun hadet il-miżura detrimental li tipprova li dik il-miżura kienet ibbażata fuq raġunijiet debitament ġustifikati."

Emenda tal-artikolu 9 tal-Att prinċipali.

7. Is-subartikolu (1) tal-artikolu 9 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"(1) L-iżvelar huwa żvelar protett jekk l-informatur:

(a) kellu raġunijiet raġonevoli biex jemmen li l-informazzjoni dwar ksur żvelat kienet vera fiż-żmien tal-iżvelar u li dik l-informazzjoni kienet taqa' fil-kamp ta' applikazzjoni ta' dan l-Att; u

(b) żvela internament f'konformità mal-artikolu 12 jew esternament f'konformità mal-artikolu 16, jew għamel żvelar pubbliku f'konformità mal-artikolu 18A."

8. L-artikolu 10 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 10 tal-Att prinċipali.

"Informazzjoni protetta bil-privileġġ professjonali legali u mediku. Kap. 377.

10. (1) Bla ħsara għad-dispożizzjonijiet tal-artikolu 6A(c) tal-Att dwar Segretezza Professionali, xejn f'dan l-Att ma jawtorizza persuna biex tiżvela informazzjoni protetta bil-privileġġ professjonali legali u mediku u żvelar ta' dik l-informazzjoni mhuwiex żvelar protett għall-finijiet ta' dan l-Att.

(2) Dan l-Att m'għandux jaffettwa l-applikazzjoni tal-liġijiet li għandhom x'jaqsmu mal-protezzjoni ta' informazzjoni klassifikata, is-segretezza tad-deliberazzjonijiet ġudizzjarji u r-regoli dwar il-proċedura kriminali."

9. L-artikolu 11 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 11 tal-Att prinċipali.

"Żvelar magħmul b'mod anonimu.

11. (1) Żvelar li jsir b'mod anonimu ma għandux ikun żvelar protett fit-termini ta' dan l-Att.

(2) Uffiċjal li jirrapporta dwar min jiżvela informazzjoni protetta jew l-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta jista' jirċievi u jipproċessa żvelar anonimu u jista' jqis dak l-iżvelar meta jkun qed jiġi determinat jekk tkunx saret Prattika mhux xierqa.

(3) Minkejja d-dispożizzjonijiet tas-subartikolu (1) meta wara li jsir żvelar pubbliku b'informazzjoni dwar ksur b'mod anonimu l-informatur jiġi sussegwentement identifikat u jsofri minn ritaljazzjoni, dak l-iżvelar għandu xorta jkun żvelar protett dment li l-iżvelar jissodisfa l-kondizzjonijiet stabbiliti fl-artikolu 9(1)."

10. L-artikolu 12 tal-Att prinċipali għandu jiġi sostitwit b'dan li

Sostituzzjoni tal-artikolu 12 tal-Att prinċipali.

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ġej:

"Proċeduri interni
biex tiġi riċevuta u
trattata
informazzjoni
protetta.

12. (1) Mingħajr preġudizzju għall-artikolu 16 u l-artikolu 18A, kull min iħaddem għandu jkollu proċeduri interni operattivi biex jirċievi u jittratta informazzjoni dwar Prattika mhux xierqa mwettqa fi hdan jew minn dik l-organizzazzjoni; dawn il-proċeduri interni għandhom mill-inqas jinkludu dawn li ġejjin:

(a) mezzi biex jirċievu r-rapporti bil-miktub jew bil-fomm, jew bit-tnejn. Ir-rappurtar bil-fomm għandu jkun possibbli permezz tat-telefon jew permezz ta' sistemi oħra ta' messagġi bil-vuċi, u, fuq talba mill-persuna li tirrapporta, permezz ta' laqgħa fiżika f'perjodu ta' żmien raġonevoli. Dawk il-mezzi għandhom jitfasslu, jiġu stabbiliti u operati b'mod sigur li jiżgura li l-kunfidenzjalità tal-identità tal-informatur u ta' kwalunkwe parti terza msemmija fl-iżvelar tkun protetta, u tipprevjeni l-aċċess għalihom minn membri tal-persunal mhux awtorizzati;

(b) in-nomina ta' uffiċjal li jirrapporta dwar iżvelar ta' informazzjoni protetta kompetenti għas-segwitu tar-rapporti li jistgħu jkunu l-istess persuna jew dipartiment bħal dak li jirċievi l-iżvelar protett u li se jzomm komunikazzjoni mal-informatur u, fejn meħtieġ, jitlob aktar informazzjoni minn u jipprovdi feedback lil dak l-informatur;

(ċ) segwitu diliġenti mill-persuna jew dipartiment deżinjati msemmija fil-paragrafu (b).

(2) Informazzjoni ċara u faċilment aċċessibbli dwar l-eżistenza tal-proċeduri interni, u informazzjoni adegwata dwar kif jintużaw il-proċeduri għandha tiġi ppubblikata b'mod wiesa' fl-organizzazzjoni u għandha tiġi ppubblikata mill-ġdid f'intervalli regolari. Kull min iħaddem għandu jipprovdi wkoll informazzjoni ċara u faċilment aċċessibbli dwar il-proċeduri għar-rappurtar estern lill-awtoritajiet kompetenti skont l-artikolu 15 u, fejn relevanti għall-istituzzjonijiet, il-korpi, l-uffiċċji jew l-aġenziji tal-Unjoni Ewropea.

(3) L-iżvelar intern huwa iżvelar protett magħmul skont id-dispożizzjonijiet ta' dan l-Att jekk isir minn impjegat lil min iħaddem b'mod sostanzjali bil-mod stabbilit mill-proċeduri interni stabbiliti minn min iħaddem biex jirċievi jew jittratta dak l-iżvelar.

(4) Għall-finijiet tal-Taqsima III Sezzjoni 2, "min iħaddem" tfisser l-istess bħat tifsira kif assenjata lilha fit-Tieni Skeda:

Iżda li, dan ma għandux japplika għal entitajiet li jaqgħu fil-kamp ta' applikazzjoni tal-Parti I(B) u II tat-Tielet Skeda:

Iżda wkoll li, l-organizzazzjoni fis-settur privat b'ħamsin (50) sa mitejn, disgħa u erbghin (249) haddiem tista' taqsam ir-riżorsi fir-rigward tal-wasla ta' rapporti u kwalunkwe investigazzjoni li għandha titwettaq. Dan għandu jkun mingħajr preġudizzju għall-obbligi imposti fuq l-organizzazzjonijiet tas-settur privat permezz ta' dan l-Att biex tinzamm il-fiduċja, biex jingħata feedback, u biex jiġu indirizzati r-rapporti tal-ksur."

11. Is-subartikolu (1) tal-artikolu 13 tal-Att prinċipali għandu jiġi sostitwit b'dan is-subartikolu ġdid li ġej:

Emenda tal-artikolu 13 tal-Att prinċipali.

"(1) L-uffiċjal li jirrapporta l-iżvelar ta' informazzjoni protetta għandu jirrikonoxxi li rċieva żvelar intern fi żmien sebat (7) ijiem mill-wasla tiegħu u jipprovdi feedback fi żmien raġonevoli, li ma jaqbiżx it-tliet (3) xhur mir-rikonoxximent tal-irċevuta jew, jekk ma tkun intbagħtet l-ebda konferma lill-persuna li tirrapporta, tliet (3) xhur mill-iskadenza tal-perjodu ta' sebat (7) ijiem wara li jkun sar ir-rapport."

12. Fis-subartikolu (1) tal-artikolu 16 tal-Att prinċipali, minnufih wara l-kliem "jista' jkun magħmul lill-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta tal-awtorità kif provdut fl-Ewwel Skeda" għandha tiġi miżjuda il-kelma "direttament".

Emenda tal-artikolu 16 tal-Att prinċipali.

13. L-artikolu 17 tal-Att prinċipali għandu jiġi emendat b'dan li ġej:

Emenda tal-artikolu 17 tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) L-awtoritajiet kollha msemmija fl-Ewwel Skeda għandhom:

(a) jistabilixxu Unità indipendenti u awtonoma tar-rapporti dwar l-iżvelar ta' informazzjoni protetta, sabiex tirċievi u tittratta informazzjoni dwar ksur u li għandha tissodisfa l-kriterji kollha li ġejjin:

(i) tiġi mfaßla, stabbilita u operata b'mod li tiżgura l-kompletezza, l-integrità u l-kunfidenzjalità tal-informazzjoni u tipprevjeni l-aċċess għaliha minn membri tal-persunal mhux awtorizzati tal-awtorità;

(ii) tippermetti l-ħażna durabbli ta' informazzjoni skont l-artikolu 21A biex ikunu jistgħu jitwettqu aktar investigazzjonijiet;

(b) minnufih, u fi kwalunkwe każ fi żmien sebat (7) ijiem minn meta jasal l-iżvelar estern, jirrikonoxxu dik il-wasla sakemm li l-informatur ma jkunx talab esplicitament mod ieħor jew l-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta ma tkunx raġonevolment tal-fehma li rrikonoxximent tal-wasla tal-iżvelar għandu jipperikola l-protezzjoni tal-identità tal-persuna li tirrapporta;

(ċ) isegwu b'mod diligenti l-iżvelar estern;

(d) jipprovdu feedback lill-informatur f'perjodu ta' żmien raġonevoli li ma jaqbiżx it-tliet (3) xhur, jew sitt (6) xhur f'każijiet debitament ġustifikati;

(e) jikkomunikaw lill-informatur l-eżitu finali tal-investigazzjonijiet attivati mir-rapport, f'konformità mal-proċeduri previsti fil-liġi nazzjonali;

(f) jittrasmettu fi żmien xieraq l-informazzjoni li tinsab fl-iżvelar lill-istituzzjonijiet, korpi, uffiċċji jew aġenziji kompetenti tal-Unjoni Ewropea, kif xieraq, għal investigazzjoni ulterjuri, fejn previst skont il-liġi.";

(b) is-subartikolu (2) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (10) tiegħu u minnufih wara s-subartikolu (1) tiegħu għandhom jiġu miżjudaw dawn is-subartikoli godda li ġejjin:

"(2) L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta għandha tippermetti żvelar estern bil-miktub u bil-fomm. L-iżvelar bil-fomm għandu jkun possibbli bit-telefon jew permezz ta' sistemi oħra ta' messaġġi bil-vuċi u, fuq talba tal-informatur, permezz ta' laqgħa fiżika f'perjodu ta' żmien raġonevoli.

(3) L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta għandha tiżgura li, fejn żvelar estern jiġi riċevut permezz ta' mezzi oħra minbarra mezzi ta' rapportar imsemmija fis-subartikoli (1) u (2) jew minn membri tal-persunal għajr dawk responsabbli għat-trattament tar-rapporti, il-membri tal-persunal li jirċevuh huma pprojbiti milli jiżvelaw kwalunkwe informazzjoni li tista' tidentifika lill-informatur jew lill-persuna kkonċernata, u li jibagħtu r-rapport minnufih mingħajr modifika lill-membri tal-persunal responsabbli għat-trattament tar-rapporti.

(4) L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta għandha taħtar membri tal-persunal responsabbli għat-trattament tar-rapporti, u b'mod partikolari:

(a) jipprovdu lil kwalunkwe persuna interessata b'informazzjoni dwar il-proċeduri għar-rappurtar;

(b) jirċievu u jsegwu l-iżvelar esterni;

(ċ) iżommu kuntatt mal-informatur bl-iskop li jipprovdu feedback u jitlobu aktar informazzjoni fejn meħtieġ.

(5) Il-membri tal-persunal imsemmija fis-subartikolu (4) għandhom jirċievu taħriġ speċifiku għall-finijiet tal-immaniġġjar tar-rapporti:

(a) sabiex jipprovdu lil kwalunkwe persuna interessata b'informazzjoni dwar il-proċeduri għar-rappurtar;

(b) sabiex jirċievu u jsegwu l-iżvelar estern;

(ċ) sabiex iżommu kuntatt mal-informatur għall-fini li jipprovdu feedback u jitlobu aktar informazzjoni fejn meħtieġ.

(6) L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta għandha tippubblika fuq is-siti web tagħhom f'sezzjoni separata, faċilment identifikabbli u aċċessibbli tal-anqas l-informazzjoni li ġejja:

(a) il-kondizzjonijiet biex wieħed jikkwalifika għall-protezzjoni skont dan l-Att;

(b) id-dettalji ta' kuntatt tal-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta kif previst fis-subartikolu (1), b'mod partikolari l-indirizzi elettronici u postali, u n-numri tat-telefon għal dawg il-mezzi, li jindikaw jekk il-konverżazzjonijiet telefoniċi humiex irregistrati;

(ċ) il-proċeduri applikabbli għar-rappurtar ta' ksur, inkluż il-mod li bih l-awtorità kompetenti tista' titlob lill-informatur biex jiċċara l-informazzjoni rrapportata jew biex jipprovdi informazzjoni addizzjonali, l-iskeda ta' żmien għall-għoti ta' feedback u t-tip u l-kontenut ta' dak il-feedback;

(d) ir-regim ta' kunfidenzjalità applikabbli għar-rapporti, u b'mod partikolari l-informazzjoni relatata mal-ipproċessar ta' data personali f'konformità mal-artikolu 6A, l-Artikoli 5 u 13 tar-Regolament (UE) 2016/679 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' April 2016 dwar il-protezzjoni tal-persuni fiżiċi fir-rigward tal-ipproċessar ta' data personali u dwar il-moviment liberu ta' tali data, u li jhassar id-Direttiva 95/46/KE (Regolament Ġenerali dwar il-Protezzjoni tad-Data), ir-regolament 13 tar-Regolamenti dwar il-Protezzjoni tad-Data (l-Ipproċessar ta' Data Personali minn Awtoritajiet Kompetenti għall-Finijiet tal-Prevenzjoni, l-Investigazzjoni, is-Sejbien jew il-Prosekuzzjoni ta' Reati Kriminali jew l-Eżekuzzjoni ta' Pieni Kriminali)

u l-Artikolu 15 tar-Regolament (UE) 2018/1725 tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Ottubru 2018 dwar il-protezzjoni ta' persuni fiżiċi fir-rigward tal-ipproċessar ta' data personali mill-istituzzjonijiet, korpi, uffiċċji u aġenziji tal-Unjoni u dwar il-moviment liberu ta' tali data, u li jhassar ir-Regolament (KE) Nru 45/2001 u d-Deċiżjoni Nru 1247/2002/KE, kif applikabbli;

(e) in-natura tas-segwitu li għandu jingħata lir-rapporti;

(f) ir-rimedji u l-proċeduri għall-protezzjoni mir-ritaljazżjoni u d-disponibbiltà ta' pariri kunfidenzjali għal persuni li jkunu qed jikkontemplaw ir-rappurtar;

(g) dikjarazzjoni li tispjega b'mod ċar il-kondizzjonijiet li taħthom persuni li jiżvelaw lill-awtorità kompetenti jkunu protetti milli jgarrbu responsabbiltà għal ksur tal-kunfidenzjalità skont l-artikolu 4(1); u

(h) id-dettalji ta' kuntatt taċ-ċentru tal-informazzjoni jew tal-awtorità amministrattiva indipendenti unika kif previst fl-artikolu 4(4) fejn applikabbli.

(7) L-Unitajiet dwar rapporti ta' żvelar ta' informazzjoni protetta għandhom jirrevedu l-proċeduri tagħhom biex jirċievu l-iżvelar, u s-segwitu tagħhom, b'mod regolari, u mill-inqas darba kull tliet (3) snin. Meta jirrevedu dawn il-proċeduri, l-awtoritajiet kompetenti għandhom iqisu l-esperjenza tagħhom kif ukoll dik ta' Unità oħra dwar rapporti ta' żvelar ta' informazzjoni protetta u jadattaw il-proċeduri tagħhom kif xieraq.

(8) L-Unitajiet dwar rapporti ta' żvelar ta' informazzjoni protetta jistgħu jagħlqu proċeduri dwar rapporti ripetittivi li ma jinkludu ebda informazzjoni sinifikanti ġdida dwar Prattika mhux xierqa meta mqabbla ma' rapport preċedenti li fir-rigward tiegħu ikunu ġew konkluzi l-proċeduri relevanti, dment li ċirkostanzi ġodda legali jew fattwali ma jiġġustifikawx segwitu differenti. F'dan il-każ, l-Unitajiet dwar rapporti ta' żvelar ta' informazzjoni protetta għandhom jinnotifikaw lill-persuna li tirrapporta dwar id-deċiżjoni tagħhom u r-raġunijiet għaliha.

(9) F'każ ta' influksi għoljin ta' rapporti, l-Unitajiet dwar rapporti ta' żvelar ta' informazzjoni protetta jkunu jistgħu jitrattaw rapporti dwar ksur serju jew ksur ta' dispożizzjonijiet essenzjali li jaqgħu fil-kamp ta' applikazzjoni ta' dan l-Att bħala kwistjoni ta' prijorità, mingħajr preġudizzju għall-perjodu ta' żmien kif stabbilit fil-paragrafu (d) tas-subartikolu (1).".

Żieda ta' Sezzjoni 4 ġdida u artikolu 18A ġdid fl-Att prinċipali.

14. Is-Sezzjoni 4 ġdida u l-artikolu 18A ġdid fl-Att prinċipali għandhom jiġu miżjuda kif ġej:

(a) fl-ewwel, it-tieni u t-tielet kolonni tat-Taqsim tal-Att tiegħu, minnufih wara l-kliem "Sezzjoni 3 Żvelar Estern 15–18" għandhom jiġu miżjuda fl-linja ġdida l-kliem "Sezzjoni 4 Żvelar Pubbliku 18A"; u

(b) minnufih wara l-artikolu 18 tiegħu għandhom jiġu miżjuda dawn l-intestatura u l-artikolu ġdid li ġejjin:

**"SEZZJONI 4
ŻVELAR PUBBLIKU**

18A. (1) Hlief kif previst f'din it-Taqsima, żvelar pubbliku għandu jiġi protett biss jekk żvelar intern skont is-Sezzjoni 2 ta' din it-Taqsima u żvelar estern skont is-Sezzjoni 3 ta' din it-Taqsima diġà jkunu saru, iżda ma ttieħdet l-ebda azzjoni xierqa b'reazzjoni għar-rapport fil-perjodi ta' żmien imsemmija fl-artikolu 13(1) u l-artikolu 17(1)(b).

Żvelar pubbliku għandu jkun bħala żvelar protett skont dan l-Att jekk tiġi ssodisfatta kwalunkwe waħda (1)

mill-kondizzjonijiet li ġejjin:

L-informatur għandu raġunijiet raġonevoli sabiex jemmen li:

(a) il-ksur jista' jikkostitwixxi periklu imminenti jew evidenti għall-interess pubbliku, bħal meta jkun hemm sitwazzjoni ta' emerġenza jew riskju ta' ħsara irriversibbli; jew

(b) fil-każ ta' rapportar estern, hemm riskju ta' ritaljazzjoni jew hemm prospett baxx li l-ksur jiġi indirizzat b'mod effettiv, minħabba ċ-ċirkostanzi partikolari tal-każ, bħal dawk fejn l-evidenza tista' tinheba jew tinqered jew fejn awtorità tista' tkun f'kollużjoni mal-awtur tal-ksur jew involuta fil-ksur.

(2) Dan l-artikolu ma għandux japplika għal każijiet fejn persuna tiżvela direttament informazzjoni lill-istampa skont il-liġi nazzjonali speċifika li tistabbilixxi sistema ta' protezzjoni relatata mal-libertà tal-espressjoni u tal-informazzjoni."

15. Minnufih wara l-artikolu 21 tal-Att prinċipali għandu jiġi miżjud dan l-artikolu ġdid li ġej:

Żieda ta' artikolu 21A ġdid fl-Att prinċipali.

"Għandhom jinżammu rekords ta' kull rapport riċevut.

21A. (1) L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċjali li jirrapportaw dwar l-iżvelar ta' informazzjoni protetta għandhom iżommu rekords ta' kull rapport riċevut, f'konformità mar-rekwiżiti ta' kunfidenzjalità previsti fl-artikolu 6:

Iżda li, r-rapporti għandhom jinħażnu għal mhux aktar milli jkun meħtieġ u proporzjonat sabiex ikun hemm konformità mar-rekwiżiti imposti minn dan l-Att, jew rekwiżiti oħra imposti mil-liġi.

(2) Fejn tintuża linja tat-telefon irrekordjata jew sistema oħra rrekordjata ta' messagġi bil-vuċi għall-iżvelar, soġġett għall-kunsens tal-informatur, l-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċjali li jirrapportaw l-iżvelar ta' informazzjoni protetta għandu jkollhom id-dritt li jiddokumentaw ir-rapportar bil-fomm b'wieħed (1) mill-modi li ġejjin:

(a) billi jirreġistraw il-konverżazzjoni b'mezz durabbli u li tista' tiġi rkuprata; jew

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(b) permezz ta' traskrizzjoni shiħa u preċiża tal-konverżazzjoni mhejjija mill-membri tal-persunal responsabbli għat-trattament tar-rapport. L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċjali li jirrapportaw dwar l-iżvelar ta' informazzjoni protetta għandhom joffru lill-informatur l-opportunità li jivverifika, jirrettifika u jaqbel dwar it-traskrizzjoni tas-sejħa billi jiffirmaha.

(3) Fejn tintuża linja telefonika mhux irreġistrata jew sistema oħra ta' messagġi bil-vuċi mhux irrekordjata għall-iżvelar, l-Unitajiet tar-rapporti dwar l-iżvelar ta' informazzjoni protetta u l-uffiċjali li jirrapportaw dwar l-iżvelar ta' informazzjoni protetta għandu jkollhom id-dritt li jiddokumentaw l-iżvelar bil-fomm fil-forma ta' minuti preċiżi tal-konverżazzjoni miktuba mill-membri tal-persunal responsabbli għat-trattament tal-iżvelar. L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċjal li jirrapporta dwar l-iżvelar ta' informazzjoni protetta għandhom joffru lill-informatur l-opportunità li jivverifika, jirrettifika u jaqbel dwar il-minuti tal-konverżazzjoni billi jiffirmahom.

(4) Fejn persuna titlob laqgħa mal-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u mal-uffiċjali li jirrapportaw dwar l-iżvelar ta' informazzjoni protetta għall-finijiet ta' żvelar skont l-artikolu 12(1)(a) u l-artikolu 17(2), l-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċċju ta' rapportar dwar l-iżvelar ta' informazzjoni protetta għandhom jiżguraw, soġġett għall-kunsens tal-informatur, li jinżammu rekords kompleti u preċiżi tal-laqgħa f'forma durabbli u b'mezz li tista' tiġi rkuprata. L-Unità dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċjali li jirrapportaw dwar l-iżvelar ta' informazzjoni protetta għandu jkollhom id-dritt li jiddokumentaw il-laqgħa b'wieħed mill-modi li ġejjin:

(a) billi jirreġistraw il-konverżazzjoni b'mezz durabbli u f'forma li tista' tiġi rkuprata; jew

(b) permezz ta' minuti preċiżi tal-laqgħa mhejjija mill-membri tal-persunal responsabbli għat-trattament tar-rapport:

Iżda li, l-Unitajiet dwar rapporti ta' żvelar ta' informazzjoni protetta u l-uffiċjali li jirrapportaw dwar l-iżvelar ta' informazzjoni protetta għandhom joffru lill-informatur l-opportunità li jivverifika, jirrettifika u jaqbel dwar il-minuti tal-laqgħa billi jiffirmahom."

16. Il-partita (2) tat-Tieni Skeda li tinsab mal-Att prinċipali għandha tiġi sostitwita b'din il-partita ġdida li ġejja:

Emenda tat-Tieni Skeda li tinsab mal-Att prinċipali.

"(2) Kwalunkwe organizzazzjoni fis-settur privat b'hamsin (50) haddiem jew aktar jew fejn wara valutazzjoni xierqa tar-riskju li tqis in-natura tal-attivitajiet tal-organizzazzjoni u l-livell ta' riskju li jirriżulta għal, b'mod partikolari l-ambjent u s-saħħa pubblika tista' teħtieġ li organizzazzjoni fis-settur privat b'inqas minn hamsin (50) haddiem tistabbilixxi mezz ta' żvelar intern u proċedura skont is-Sezzjoni 2 tat-Taqsima III."

17. Minnufih wara t-Tieni Skeda li tinsab mal-Att prinċipali għandha tiġi miżjuda din l-Iskeda ġdida li ġejja:

Żieda tat-Tielet Skeda ġdida fl-Att prinċipali.

"It-Tielet Skeda
[Artikoli 2 u 12]

L-Anness tad-[Direttiva tal-Kummissjoni \(UE\) 2019/1937](#) għandu jkun applikabbli fl-intier tiegħu bħala t-Tielet Skeda ta' dan l-Att."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 530 tal-14 ta' Diċembru, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

GEORGE VELLA
President

18th December, 2021

ACT No. LXVII of 2021

AN ACT to amend the Protection of the Whistleblower Act, Cap. 527.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and
commencement.
Cap. 527.

1. (1) The short title of this Act is the Protection of the Whistleblower (Amendment) Act, 2021 and this Act shall be read and construed as one with the Protection of the Whistleblower Act, hereinafter referred to as "the principal Act".

(2) This Act shall come into force on such date or dates as the Minister for Justice and Governance may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.

Scope.

(3) This Act transposes 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. Article 2 of the principal Act shall be amended by the following: Amendment of article 2 of the principal Act.

(a) sub-article (1) thereof shall be amended by the following:

(i) immediately after the definition "disciplined force" thereof there shall be added the following new definition:

"disclose" or "to disclose" means the oral or written communication of information on improper practice;"

(ii) paragraph (g) of the definition "employee" thereof shall be substituted by the following new paragraphs:

(g) any candidate for employment only where information concerning improper practices has been acquired during the recruitment process or other pre-contractual negotiations;

(h) shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, and paid or unpaid trainees;"

(iii) immediately after the definition "External Whistleblowing Disclosure Unit" thereof there shall be added the following new definitions:

"facilitator" means a person who assists a reporting person in the reporting process in a work-related context, and whose assistance should be confidential;

"feedback" means the provision to the reporting person of information on the action envisaged or taken as follow-up and on the grounds for such follow-up;

"follow-up" means any action taken by the recipient of a disclosure or any competent authority, to assess the accuracy of the allegations made in the report and, where relevant, to address the improper practice reported, including through actions such as an internal enquiry, an investigation, prosecution, an

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action for recovery of funds, or the closure of the procedure;"

(iv) the definition "improper practice" thereof shall be substituted by the following new definition:

" "improper practice" means an action or a series of actions whereby:

(a) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; or

(b) the health or safety of any individual has been, is being or is likely to be endangered; or

(c) the environment has been, is being or is likely to be damaged; or

(d) a corrupt practice has occurred or is likely to occur or to have occurred; or

(e) a criminal offence has been committed, is being committed or is likely to be committed; or

(f) a miscarriage of justice has occurred, is occurring or is likely to occur; or

(g) bribery has occurred or is likely to occur or to have occurred; or

(h) a person has failed, is failing or is likely to fail to comply with any legal obligation on public procurement to which he is subject; or

(i) a person has failed, is failing or is likely to fail to comply with laws on financial services, products and markets, and prevention of money laundering and terrorist financing; or

(j) a person has failed, is failing or is likely to fail to comply with product safety and compliance law; or

(k) a person has failed, is failing or is

likely to fail in ensuring transport safety; or

(l) a person has failed, is failing or is likely to fail in ensuring radiation protection and nuclear safety; or

(m) a person has failed, is failing or likely to fail in ensuring a food and feed safety, animal health and welfare; or

(n) a person has failed, is failing or is likely to fail to comply with any legal obligation on consumer protection to which he is subject; or

(o) a person has failed, is failing or is likely to fail to comply with any legal obligation on protection of privacy and personal data, and security of network and information systems to which he is subject; or

(p) a breach affecting the financial interests of the European Union as referred to in Article 325 of the Treaty on the Functioning of the European Union (TFEU) and further specified in relevant European Union measures has occurred or is likely to occur or to have occurred; or

(q) a breach relating to the internal market, as referred to in Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), including breaches of European Union competition and State aid rules, as well as breaches relating to the internal market in relation to acts which breach the rules of corporate tax or to arrangements the purpose of which is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law has occurred or is likely to occur or to have occurred; or

(r) information tending to show any matter falling within any one (1) of the preceding paragraphs has been, is being or is likely to be deliberately concealed:

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Provided that, in the interpretation of this definition due account shall be given to the *de minimis* rule so that very minor or trivial matters shall not fall under the provisions of this Act;"

(v) immediately after the definition "improper practice" thereof there shall be added the following new definition:

"information on improper practices" means information, including reasonable suspicions, about actual or potential improper practices, which occurred or are very likely to occur in the organisation in which the reporting person works or has worked or in another organisation with which the reporting person is or was in contact through his work, and about attempts to conceal such breaches;"

(vi) the definition "occupational detriment" thereof shall be substituted by the following new definition:

"occupational detriment", means any direct or indirect act or omission which occurs in a work related context, which is prompted by internal or external disclosures or by public disclosure, and which causes or may cause unjustified detriment to the whistleblower and may include:

(a) suspension, lay-off, dismissal or equivalent measures;

(b) demotion or withholding of promotion;

(c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;

(d) withholding of training;

(e) a negative performance assessment or employment reference;

(f) imposition or administering of any disciplinary measure, reprimand or other penalty, including a financial penalty;

(g) coercion, intimidation, harassment

or ostracism;

(h) discrimination, disadvantageous or unfair treatment;

(i) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he would be offered permanent employment;

(j) failure to renew, or early termination of, a temporary employment contract;

(k) harm, including to the person's reputation, particularly in social media, or financial loss, including loss of business and loss of income;

(l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that this person will not, in the future, find employment in the sector or industry;

(m) early termination or cancellation of a contract for goods or services;

(n) cancellation of a licence or permit;

(o) psychiatric or medical referrals;

(p) being subjected to any disciplinary action including for breach of ethics or confidentiality;

(q) being subjected to a term or condition of employment or retirement which is altered or kept altered to his disadvantage:

Provided that, this shall not apply where the action is taken where the direct or indirect act or omission is administratively or commercially justifiable for organizational reasons;";

(vii) immediately after the definition "person" thereof there shall be added the following new definition:

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" "person concerned" means a natural or legal person who is referred to in the report or public disclosure as a person to whom the improper practice is attributed or with whom that person is associated;"

(viii) immediately after the definition "public administration" thereof, there shall be added the following new definition:

" "public disclosure" means a disclosure made in accordance with Section 4 of Part III;" and

(ix) in the definition "whistleblowing reports unit" thereof, the words "Disclosure Unit." shall be substituted by the words "Disclosure Unit;" and immediately thereafter there shall be added the following new definition:

" "work-related context" means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information on improper practices and within which those persons may suffer retaliation if they reported such information.";

(b) immediately after sub-article (3) thereof there shall be added the following new sub-articles:

"(4) Where specific rules on the reporting of breaches are provided for in the sector-specific laws listed in the Third Schedule, those laws shall apply. The provisions of this Act shall be applicable to the extent that a matter is not mandatorily regulated in those laws.

(5) This Act shall not affect the exercise by workers of their rights to consult their representatives or trade unions, and on protection against any unjustified detrimental action prompted by such consultations as well as on the autonomy of the social partners and their right to enter into collective agreements. This is without prejudice to the level of protection granted by this Act."

Amendment of article 4 of the principal Act.

3. Immediately after sub-article (2) of article 4 of the principal Act there shall be added the following new sub-articles:

"(3) The protection afforded to a whistleblower shall, where relevant, be extended to:

Cap. 9.

- (a) facilitators;
 - (b) third persons who are connected with the reporting persons and who could suffer retaliation in a work-related context, such as colleagues or relatives of the reporting persons;
 - (c) legal entities that the reporting persons own, work for or are otherwise connected with in a work-related context; and
 - (d) legal aid in criminal and in cross-border civil proceedings in accordance with the relevant provisions of the Criminal Code and Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters and in accordance with national law, legal aid in further proceedings and legal counselling or other legal counselling.
- (4) The whistleblower shall have access to:
- (a) comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned;
 - (b) effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Act; and
 - (c) legal aid in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings and Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters and, in accordance with national law, legal aid in further proceedings and legal counselling or other legal assistance."

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Amendment of article 6 of the principal Act.

4. Immediately after sub-article (4) of article 6 of the principal Act, there shall be added the following new sub-article:

Cap. 589.

"(5) Every whistleblowing reporting officer or whistleblowing reports Unit that receive information on breaches that includes trade secrets as defined under article 2 of the Trade Secrets Act shall not use or disclose those trade secrets for purposes going beyond what is necessary for proper follow-up."

Addition of new articles 6A and 6B to the principal Act.

5. Immediately after article 6 of the principal Act, there shall be added the following new articles:

"Processing of personal data.

Cap. 586.
S.L. 586.08.

6A. Any processing of personal data carried out pursuant to this Act, including the exchange or transmission of personal data by the whistleblowing reporting officer or whistleblowing reports Unit, shall be carried out in accordance with 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), the Data Protection Act and the Data Protection (Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations:

Provided that, personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay.

Disclosure of information on breaches under this Act.

Cap. 589.

6B. Where a person discloses information on breaches falling within the scope of this Act, and that information includes trade secrets, and where that person meets the conditions of this Act, such a disclosure shall be considered lawful under the conditions of article 5(2) of the Trade Secrets Act."

Amendment of article 7 of the principal Act.

6. Sub-articles (4), (5) and (6) of article 7 of the principal Act shall be renumbered as sub-articles (5), (6) and (7) respectively and immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) In proceedings referred to in sub-article (1), where the whistleblower establishes that he made an internal, external

or public disclosure and suffered a detriment, it shall be presumed that the detriment was made in retaliation for the report or the public disclosure. In such cases, it shall be for the person who has taken the detrimental measure to prove that, that measure was based on duly justified grounds."

7. Sub-article (1) of article 9 of the principal Act shall be substituted by the following: Amendment of article 9 of the principal Act.

"(1) A disclosure is a protected disclosure if the whistleblower:

(a) had reasonable grounds to believe that the information on breaches disclosed was true at the time of the disclosure and that such information fell within the scope of this Act; and

(b) disclosed internally in accordance with article 12 or externally in accordance with article 16, or made a public disclosure in accordance with article 18A."

8. Article 10 of the principal Act shall be substituted by the following: Substitution of article 10 of the principal Act.

"Information protected by legal and medical professional privilege. Cap. 377.

10. (1) Saving the provisions of article 6A(c) of the Professional Secrecy Act, nothing in this Act authorises a person to disclose information protected by legal and medical professional privilege and a disclosure of such information is not a protected disclosure for the purposes of this Act.

(2) This Act shall not affect the application of laws relating to the protection of classified information, the secrecy of judicial deliberations and rules on criminal procedure."

9. Article 11 of the principal Act shall be substituted by the following: Substitution of article 11 of the principal Act.

"Anonymously made disclosures.

11. (1) Anonymously made disclosures shall not be a protected disclosure in terms of this Act.

(2) The whistleblowing reporting officer or the whistleblowing reports Unit may receive and process anonymous disclosures and may take that disclosure into consideration in determining whether improper practice has occurred.

A 1642

(3) Despite the provisions of sub-article (1) when following a public disclosure with information on breaches that is made anonymously the whistleblower is subsequently identified and suffers retaliation, that disclosure shall still be a protected disclosure provided that the disclosure satisfies the conditions established in article 9(1)."

Substitution of article 12 of the principal Act.

10. Article 12 of the principal Act, shall be substituted by the following:

"Internal procedures for receiving and dealing with protected information.

12. (1) Without prejudice to article 16 and article 18A, every employer shall have in operation internal procedures for receiving and dealing with information about improper practice committed within or by that organisation; such internal procedures shall at least include the following:

(a) channels for receiving the reports in writing or orally, or both. Oral reporting shall be made possible by telephone or through other voice messaging systems, and, upon request by the reporting person, by means of a physical meeting within a reasonable time frame. Such channels shall be designed, established and operated in a secure manner that ensures that the confidentiality of the identity of the whistleblower and any third party mentioned in the disclosure is protected, and prevents access thereto by non-authorised staff members;

(b) the designation of a whistleblowing reporting officer competent for following-up on the reports which may be the same person or department as the one that receives the protected disclosure and which will maintain communication with the whistleblower and, where necessary, ask for further information from and provide feedback to that whistleblower;

(c) diligent follow-up by the designated person or department referred to in paragraph (b).

(2) Clear and easily accessible information about the existence of the internal procedures, and adequate information on how to use the procedures shall be published widely within the organisation and shall be republished at regular intervals. Every employer shall also provide clear and easily accessible information regarding the procedures for reporting externally to competent authorities pursuant to article 15 and, where relevant to institutions, bodies, offices or agencies of the European Union.

(3) An internal disclosure is a protected disclosure made in accordance with the provisions of this Act if it is made by an employee to an employer substantially in the manner established by internal procedures established by the employer for receiving or dealing with such disclosures.

(4) For purposes of Part III Section 2, "employer" means the same as the meaning assigned to it in the Second Schedule:

Provided that, this shall not apply to entities falling within the scope of Part I(B) and II of the Third Schedule:

Provided further that, organisation in the private sector with fifty (50) to two hundred and forty-nine (249) workers may share resources as regards the receipt of reports and any investigation that shall be carried out. This shall be without prejudice to the obligations imposed upon private sector organisations by this Act to maintain confidentiality, to give feedback, and to address the reported breach."

11. Sub-article (1) of article 13 of the principal Act, shall be substituted by the following new sub-article:

Amendment of article 13 of the principal Act.

"(1) The whistleblowing reporting officer shall acknowledge receipt of an internal disclosure within seven (7) days of receipt and provide feedback within a reasonable time, not exceeding three (3) months from the acknowledgment of receipt or, if no acknowledgment was sent to the reporting person, three (3) months from the expiry of the seven (7) day period after the report was made."

12. In sub-article (1) of article 16 of the principal Act, immediately after the words "may be made to the whistleblowing reports Unit of the authority as provided in the First Schedule" there shall be added the word "directly".

Amendment of article 16 of the principal Act.

A 1644

Amendment of
article 17 of the
principal Act.

13. Article 17 of the principal Act shall be amended by the following:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) All authorities referred to in the First Schedule shall:

(a) set up an independent and autonomous whistleblowing reports Unit, for receiving and handling information on breaches and which shall meet all the following criteria:

(i) is designed, established and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access thereto by non-authorised staff members of the authority;

(ii) enables the durable storage of information in accordance with article 21A to allow further investigations to be carried out;

(b) promptly, and in any event within seven (7) days of receipt of the external disclosure, acknowledge that receipt unless the whistleblower explicitly requested otherwise or the whistleblowing reports Unit reasonably believes that acknowledging receipt of the disclosure shall jeopardise the protection of the reporting person's identity;

(c) diligently follow up on external disclosures;

(d) provide feedback to the whistleblower within a reasonable time frame not exceeding three (3) months, or six (6) months in duly justified cases;

(e) communicate to the whistleblower the final outcome of investigations triggered by the report, in accordance with procedures provided for under national law;

(f) transmit in due time the information contained in the disclosures to competent institutions, bodies, offices or agencies of the European Union, as appropriate, for further investigation, where provided for under law.";

(b) sub-article (2) thereof shall be renumbered as sub-article (10) thereof and immediately after sub-article (1) thereof, there shall be added the following new sub-articles:

"(2) The whistleblowing reports Unit shall enable external disclosures in writing and orally. Oral disclosures shall be possible by telephone or through other voice messaging systems and, upon request by the whistleblower, by means of a physical meeting within a reasonable time-frame.

(3) The whistleblowing reports Unit shall ensure that, where an external disclosure is received through channels other than the reporting channels referred to in sub-articles (1) and (2) or by staff members other than those responsible for handling reports, the staff members who receive it are prohibited from disclosing any information that may identify the whistleblower or the person concerned, and that they promptly forward the report without modification to the staff members responsible for handling reports.

(4) The whistleblowing reports Unit shall designate staff members responsible for handling reports, and in particular for:

(a) providing any interested person with information on the procedures for reporting;

(b) receiving and following up on external disclosures;

(c) maintaining contact with the whistleblower for the purpose of providing feedback and requesting further information where necessary.

(5) The staff members referred to in sub-article (4) shall receive specific training for the purposes of handling reports:

A 1646

(a) providing any interested person with information on the procedures for reporting;

(b) receiving and following up on external disclosures;

(c) maintaining contact with the whistleblower for the purpose of providing feedback and requesting further information where necessary.

(6) The whistleblowing reports Unit shall publish on their websites in a separate, easily identifiable and accessible section at least the following information:

(a) the conditions for qualifying for protection under this Act;

(b) the contact details for the whistleblowing reports Unit as provided for under sub-article (1), in particular the electronic and postal addresses, and the phone numbers for such channels, indicating whether the phone conversations are recorded;

(c) the procedures applicable to the reporting of breaches, including the manner in which the competent authority may request the whistleblower to clarify the information reported or to provide additional information, the time frame for providing feedback and the type and content of such feedback;

(d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with article 6A, Articles 5 and 13 of 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), regulation 13 of the Data Protection (Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation,

Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties) Regulations and Article 15 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No. 45/2001 and Decision No. 1247/2002/EC, as applicable;

(e) the nature of the follow-up that shall be given to reports;

(f) the remedies and procedures for protection against retaliation and the availability of confidential advice for persons contemplating reporting;

(g) a statement clearly explaining the conditions under which persons disclosing to the competent authority are protected from incurring liability for a breach of confidentiality pursuant to article 4(1); and

(h) contact details of the information centre or of the single independent administrative authority as provided for in article 4(4) where applicable.

(7) The whistleblowing reports Units shall review their procedures for receiving disclosures, and their follow-up, regularly, and at least once every three (3) years. In reviewing such procedures, competent authorities shall take account of their experience as well as that of other whistleblowing reports Unit and adapt their procedures accordingly.

A 1648

(8) The whistleblowing reports Units may close procedures regarding repetitive reports which do not contain any meaningful new information on improper practice compared to a past report in respect of which the relevant procedures were concluded, unless new legal or factual circumstances justify a different follow-up. In such a case, the whistleblowing reports Units shall notify the reporting person of their decision and the reasons thereof.

(9) In the event of high inflows of reports, whistleblowing reports Units may deal with reports of serious breaches or breaches of essential provisions falling within the scope of this Act as a matter of priority, without prejudice to the time frame as set out in paragraph (d) of sub-article (1).".

Addition of new Section 4 and new article 18A to the principal Act.

14. The new Section 4 and new article 18A to the principal Act, shall be added as follows:

(a) in the first, second and third columns of the Arrangement of Act thereof, immediately after the words "Section 3 External Disclosures 15-18" there shall be added a fresh line with the words "Section 4 Public Disclosures 18A"; and

(b) immediately after article 18 thereof there shall be added the new heading and new article as follows:

**"SECTION 4
PUBLIC DISCLOSURES**

18A. (1) Except as provided in this Part, a public disclosure shall only be protected if an internal disclosure in accordance with Section 2 of this Part and an external disclosure in accordance with Section 3 of this Part has already been made, but no appropriate action was taken in response to the report within the time-frames referred to in article 13(1) and article 17(1)(b).

A public disclosure shall be as a protected disclosure under this Act if any one (1) of the following conditions are fulfilled:

The whistleblower has reasonable grounds to believe that:

(a) the breach may constitute an imminent or manifest danger to the public interest, such as when there is an emergency situation or a risk of irreversible damage; or

(b) 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 particular 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.

(2) This article shall not apply to cases where a person directly discloses information to the press pursuant to specific national law establishing a system of protection relating to freedom of expression and information."

15. Immediately after article 21 of the principal Act, there shall be added the following new article:

Addition of new article 21A to the principal Act.

"Shall keep records of every report received.

21A. (1) Whistleblowing reports Unit and the whistleblowing reporting officers shall keep records of every report received, in compliance with the confidentiality requirements provided for in article 6:

Provided that, reports shall be stored for no longer than it is necessary and proportionate in order to comply with the requirements imposed by this Act, or other requirements imposed by law.

(2) Where a recorded telephone line or another recorded voice messaging system is used for disclosing, subject to the consent of the whistleblower, whistleblowing reports Unit and whistleblowing reporting officers shall have the right to document the oral reporting in one (1) of the following ways:

(a) by making a recording of the conversation in a durable and retrievable form; or

(b) through a complete and accurate transcript of the conversation prepared by the staff members responsible for handling the report. Whistleblowing reports Unit and whistleblowing reporting officers shall offer the whistleblower the opportunity to check, rectify and agree the transcript of the call by signing it.

A 1650

(3) Where an unrecorded telephone line or another unrecorded voice messaging system is used for disclosing, whistleblowing reports Units and whistleblowing reporting officers shall have the right to document the oral disclosure in the form of accurate minutes of the conversation written by the staff member responsible for handling the disclosure. The whistleblowing reports Unit and whistleblowing reporting officer shall offer the whistleblower the opportunity to check, rectify and agree the minutes of the conversation by signing them.

(4) Where a person requests a meeting with the whistleblowing reports Unit and whistleblowing reporting officers for disclosing purposes pursuant to article 12(1)(a) and article 17(2), whistleblowing reports Unit and whistleblowing reporting office shall ensure, subject to the consent of the whistleblower, that complete and accurate records of the meeting are kept in a durable and retrievable form. The whistleblowing reports Unit and whistleblowing reporting officers shall have the right to document the meeting in one of the following ways:

- (a) by making a recording of the conversation in a durable and retrievable form; or
- (b) through accurate minutes of the meeting prepared by the staff members responsible for handling the report:

Provided that, whistleblowing reports Units and whistleblowing reporting officers shall offer the whistleblower the opportunity to check, rectify and agree the minutes of the meeting by signing them."

Amendment of
the Second
Schedule to the
principal Act.

16. Item (2) of the Second Schedule to the principal Act shall be substituted by the following new item:

"(2) Any organisation within the private sector with fifty (50) or more workers or where following an appropriate risk assessment taking into account the nature of the activities of the organisation and the ensuing level of risk for, in particular the environment and public health may require an organisation in the private sector with fewer than fifty (50) workers to establish an internal disclosure channel and procedure in accordance with Section 2 of Part III."

17. Immediately after the Second Schedule to the principal Act, there shall be added the following new Schedule:

Addition of new
Third Schedule
to the principal
Act.

"Third Schedule
[Articles 2 and 12]

The Annex of [Commission Directive \(EU\) 2019/1937](#) shall be applicable in its entirety as the Third Schedule to this Act."

Passed by the House of Representatives at Sitting No. 530 of the 14th December, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

