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Newsletter N°5

Whistle-blowing hotlines in France: the CNIL gives a qualified “yes”

As reported in our [Newsletter of August 1, 2005](#), the French Data Protection Authority (CNIL - Commission Nationale de l'Informatique et des Libertés) decided to prohibit the whistle-blowing hotlines presented by two companies. The CNIL then held that such programs violated the provisions of French law of January 6, 1978, by reason of their being anonymous and were to encourage the risk of libellous denunciations.

The CNIL became quickly aware that this blanket prohibition was irreconcilable with the requirements of the Sarbanes-Oxley Act, thus placing French corporations listed in the US and French subsidiaries of US corporations listed in the US in a delicate situation.

As a result, the CNIL adopted, on November 10, 2005, guidelines defining the conditions under which whistle-blowing hotlines could be considered as compliant with French law.

In this document, the CNIL announced that it would set up, in the course of 2006, a single on-line authorization system, so as to ease the task of companies trying to set up reporting hotlines. This single authorization form has not been issued yet.

However, it is already stated in the November 10, 2005 guidelines, that in order to comply, corporations will have to limit their whistle-blowing programs to some specific areas (accounting, auditing of accounts, banking, fight against corruption). If the scope of their programs is larger than the areas mentioned above, the CNIL will examine it on a case-by-case basis, before granting any authorization.

In summary, the CNIL also stated that any French corporation wishing to implement a whistle-blowing system must also take into account the following recommendations:

- the system should not encourage anonymous denunciations,
- the company should set up a specific organization, in charge of gathering and dealing with denunciations within the company,
- the company should prevent, as much as possible, the dissemination of any such disclosed information,
- the company should protect such evidence as will be needed for the handling of whistle-blowers' complaints, so as to prevent any attempt of proof destruction,
- the company should inform the persons concerned by the complaint, so as to allow them to use their right to object and defend themselves.

Please also remember that implementation of a whistle blowing system must also be done in coordination with the elected personnel representative bodies (personnel delegates and workers committee if such exist).

If you would like more guidance or information about French regulations in this area, please contact us at newdevelopment@kahnlaw.com, or contact directly one of our partners (www.kahnlaw.com).

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