

ALLEN & OVERY

Upcoming implementation of  
the EU Whistleblowing  
Directive – What do  
Luxembourg-based companies  
need to prepare for?

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# Upcoming implementation of the EU Whistleblowing Directive – What do Luxembourg-based companies need to prepare for?



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# Introduction

Luxembourg bill: reasons and objectives

## Reasons

Fragmented  
legislation in  
Luxembourg on  
whistleblowing

Transposition of  
Directive EU  
2019/1937

## Objectives

Comprehensive  
general framework for  
whistleblower  
protection in  
Luxembourg

Effective detection  
and reporting of any  
breach of law

# Envisaged Luxembourg legal framework



# Luxembourg bill in a nutshell

## Who?

- Wide personal scope
- Any person who acquired information in a work-related context, including employees, former employees, contractors, job applicants, volunteers, trainees, shareholders, etc.

## When?

- No set date for adoption
- As of the entry of the law
- Transition period until 17 December 2023



## What?

- Acts or omissions which are unlawful or against the public interest
- Extended material scope: reporting on breaches of EU law as well as any breaches of national law

## How?

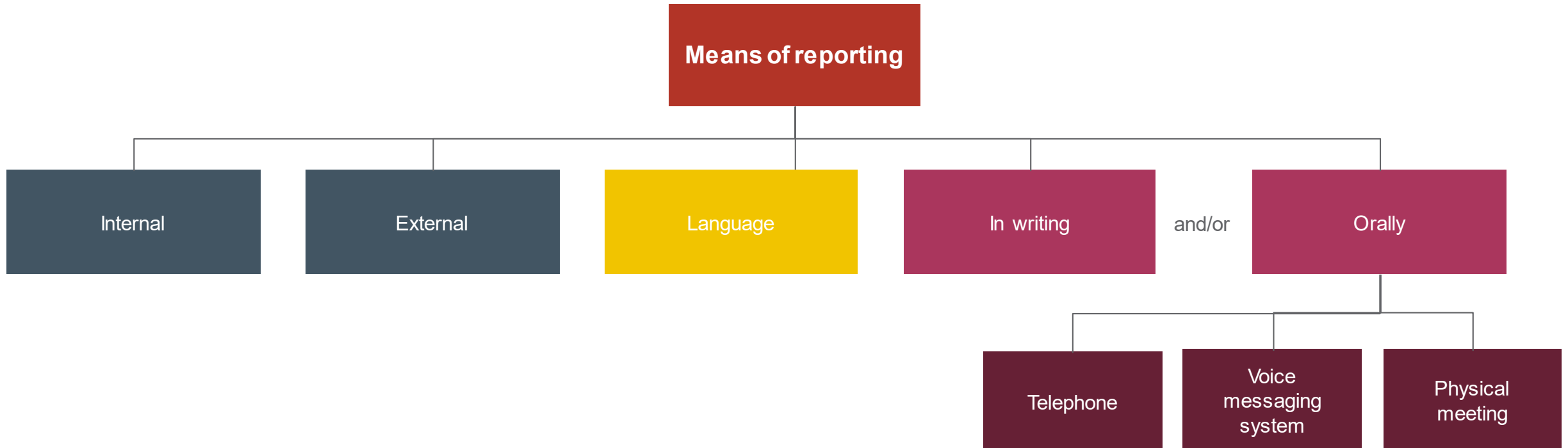
3-layer reporting structure:

- Internal channel
- External channel
- Public disclosure

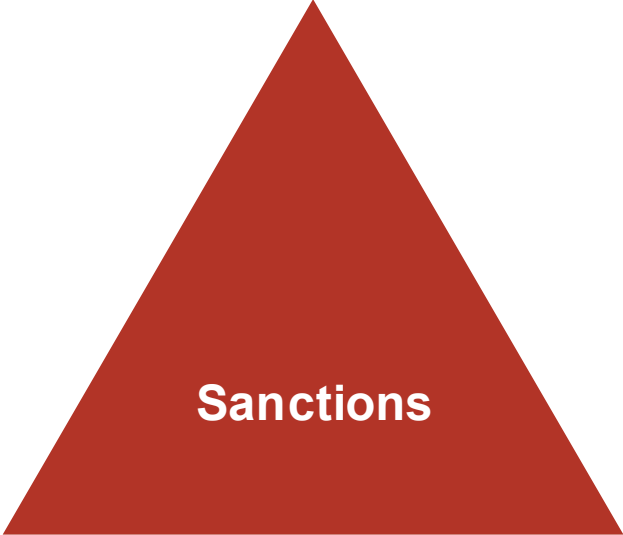
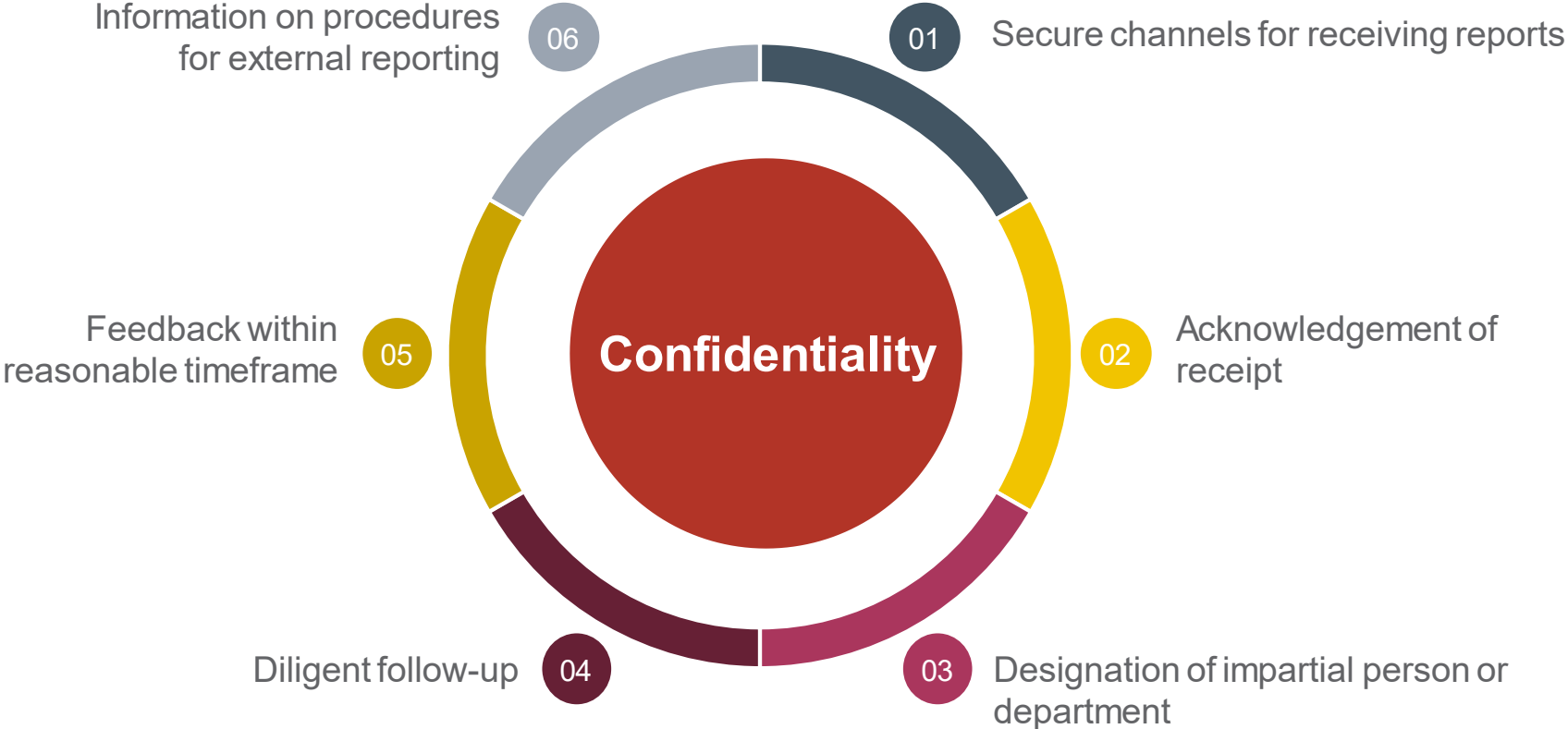
# Employment law aspects



# Design of (internal) reporting channels



# Design of (internal) reporting channels (cont'd)





# Implementation of internal reporting channels



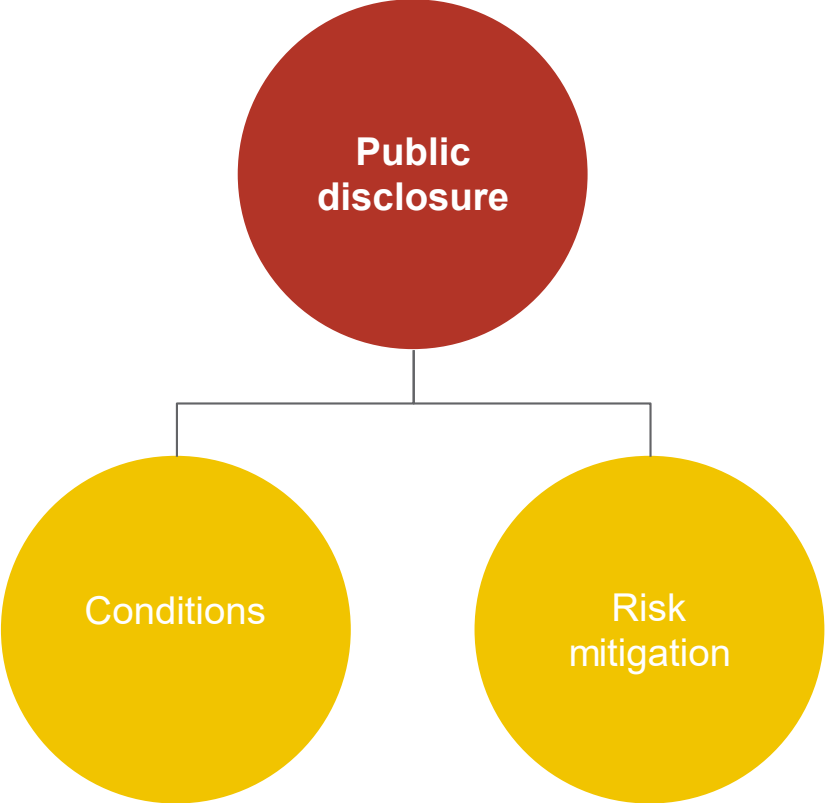
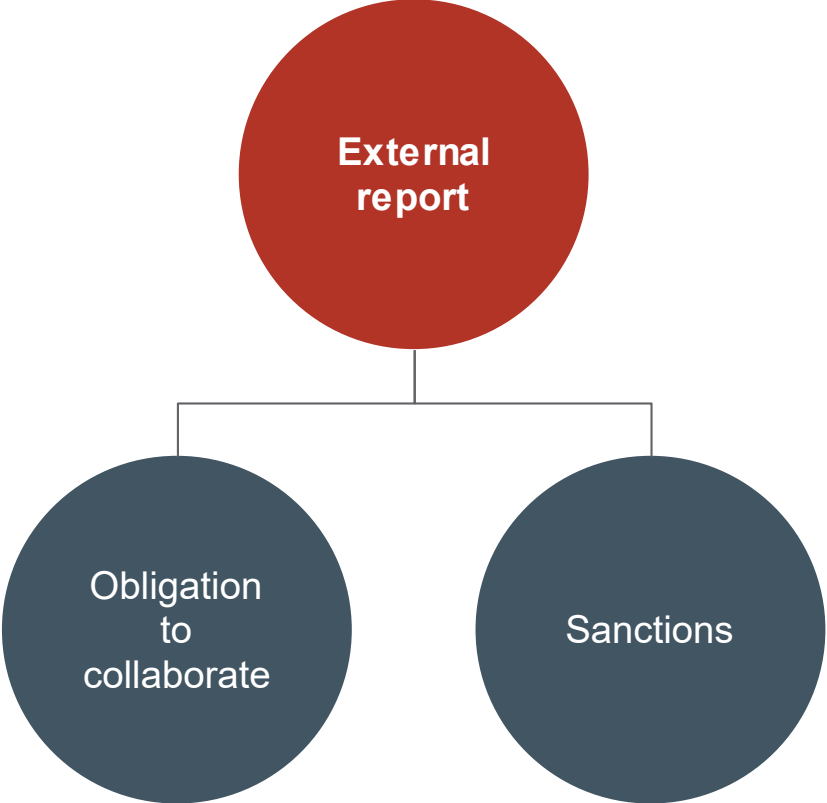
**Involvement of staff representatives**



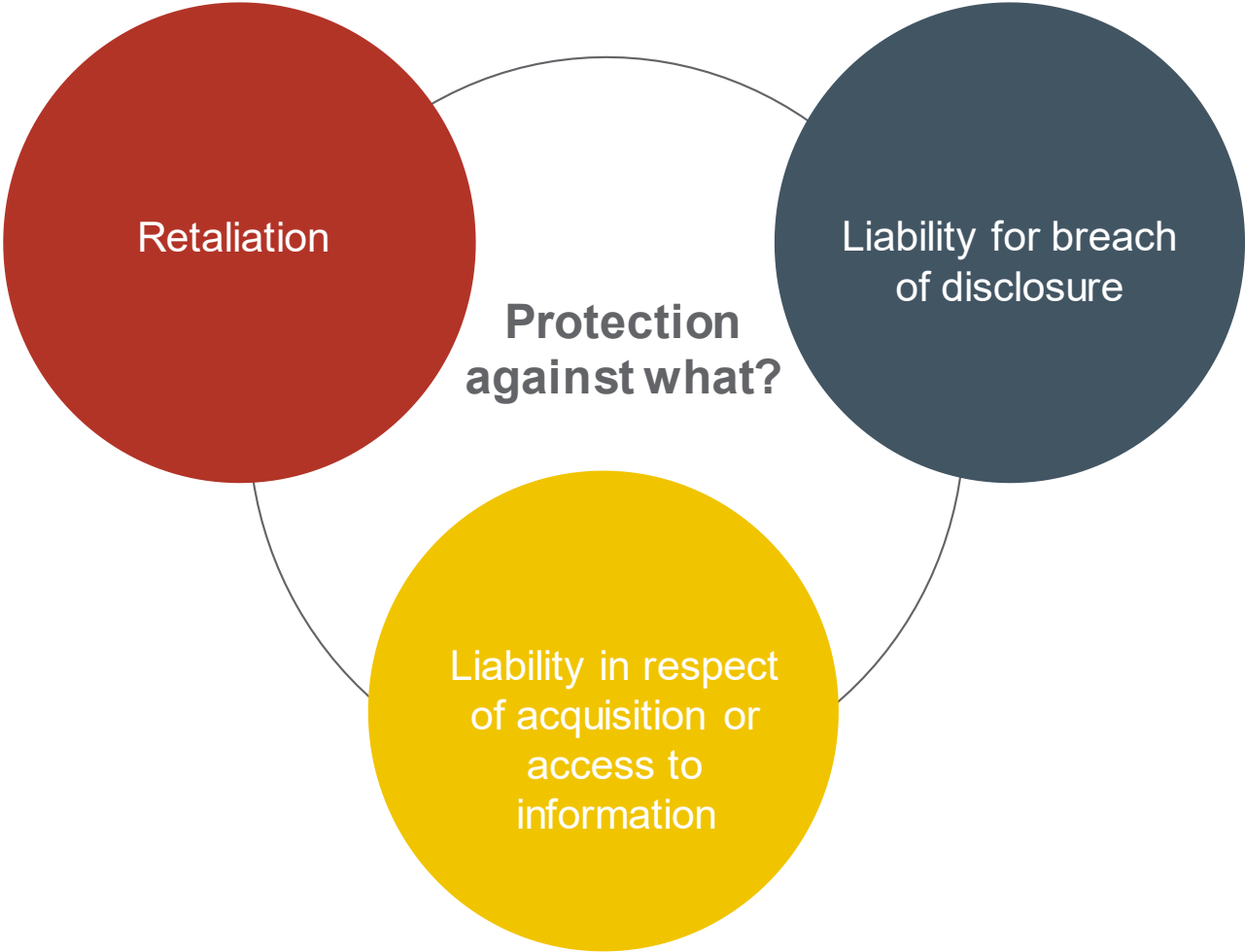
**Information / training of employees**



# Companies facing external reports or public disclosure



# Protection of whistleblowers

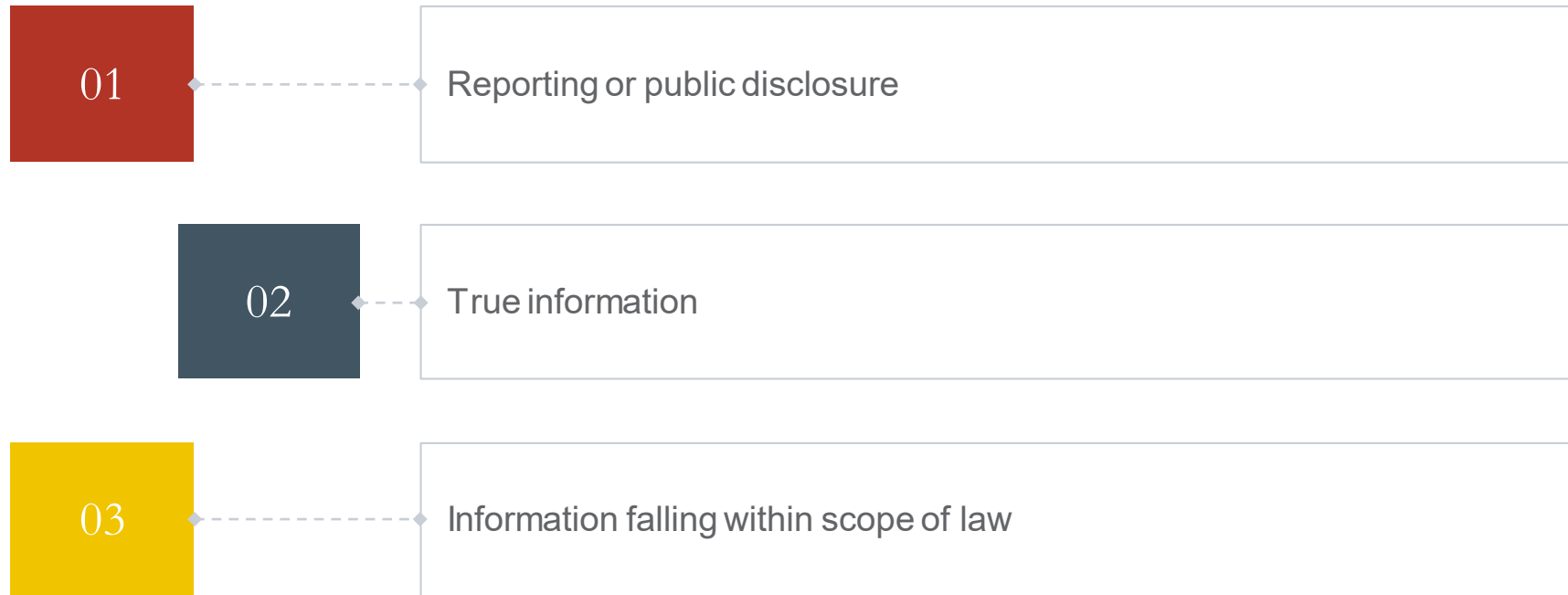


## Protection of whistleblowers (cont'd)



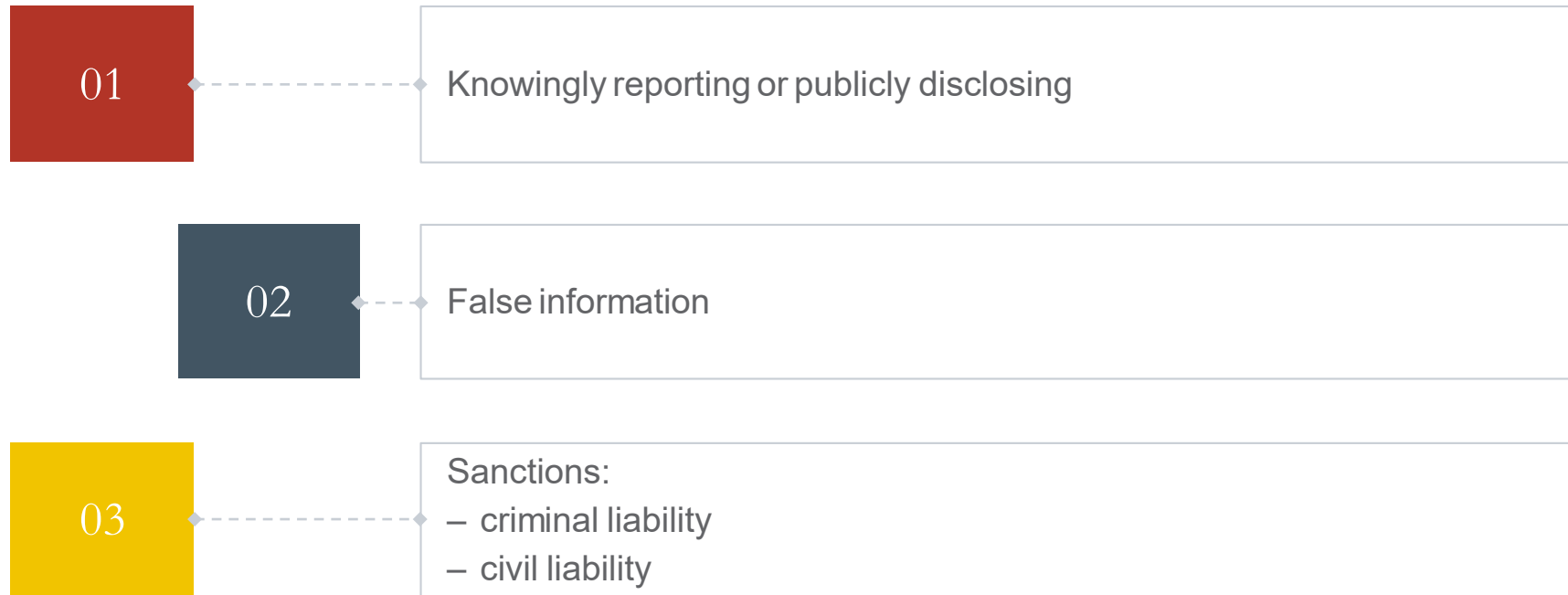
# Protection of whistleblowers (cont'd)

## Conditions for protection



# Protection of whistleblowers (cont'd)

## Reporting of false information



# Important data protection aspects



# When does the GDPR apply to your whistleblowing scheme?

## Main data subjects



### **Personal data:**

*any information relating to an identified or identifiable natural person*

### **Processing:**

*any operation or set of operations which is performed on personal data, whether electronically or by means of a filing system*



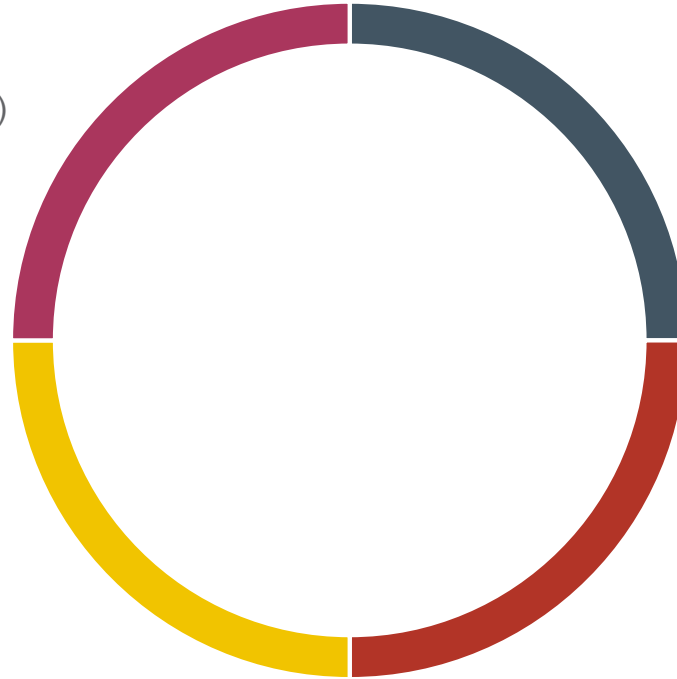
# What are the main obligations under the GDPR?

## Main legal bases

- Legal obligation
- Consent (e.g., recording of conversations)

## Information security

- Confidentiality
- Integrity
- Availability



## Information and access to personal data, except:

- Notification of the accused person may be delayed as long as this is « likely to render impossible or seriously impair the achievement of the objectives » of the investigation (Art. 14(5)(b) GDPR)
- Name of the reporting person may be disclosed only if legally required in the context of an investigation by a national authority or in the context of judicial procedures

## Data minimisation and storage limitation

# Concrete action

**Assess** how the internal reporting channel must be built to satisfy the fundamental data protection principle

01

02

Determine how to properly **inform the data subjects** on how they can exercise their rights

Carry out a **DPIA**

03

Update the **register of processing activities**

04

When **outsourcing** the internal reporting channel:

- assess whether the service provider provides “sufficient guarantees”;
- conclude a data processing agreement; and
- protect transfers to third countries

05

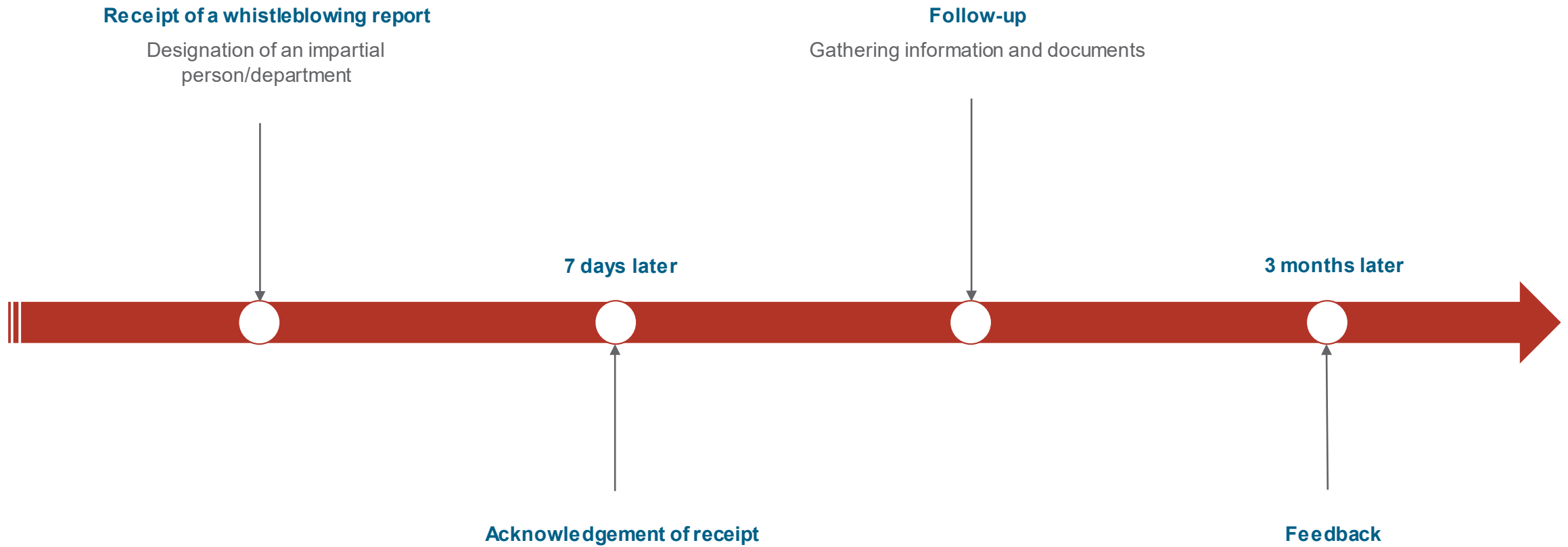
Impact on litigation /  
investigations



After reporting –  
Internal investigations



# Timeline of an internal investigation



# To keep in mind for an internal investigation



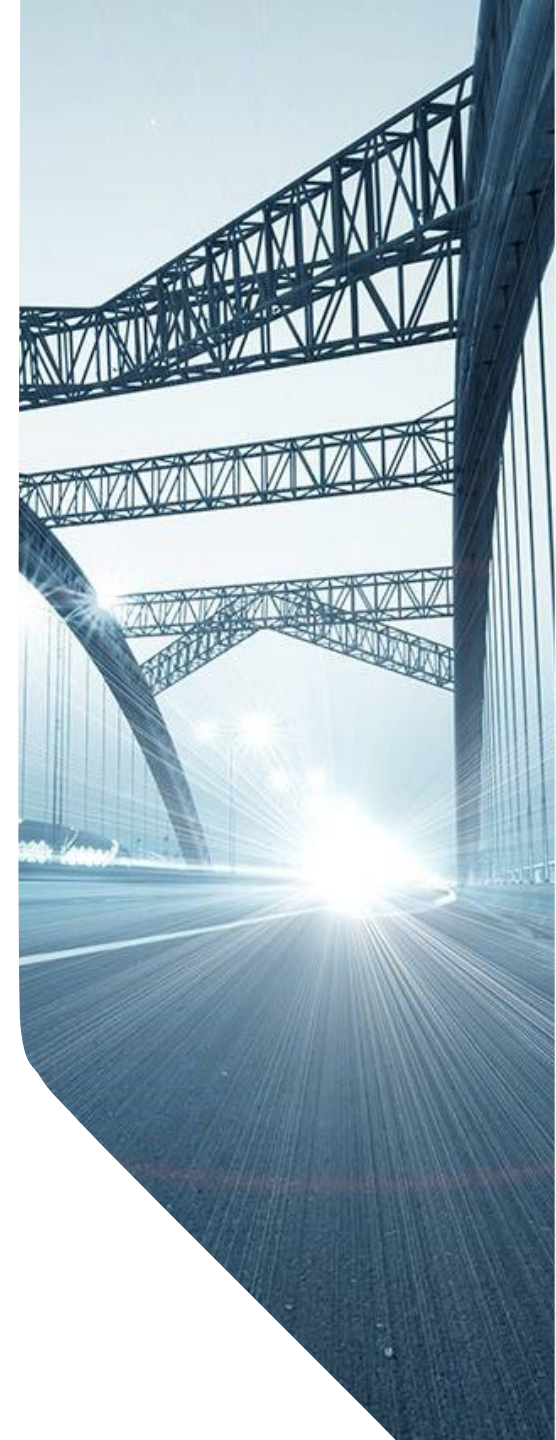
## Pitfalls

- Natural inclination to investigate either with a view to demonstrate culpability or to protect people close to us
- Result of internal investigations is prone to legal challenge



## Solutions

- Impartiality, objectivity and respect for due process rights
- Document and justify every step along the way
- Where sensitive, involve third parties (auditor, lawyers)



# Requirements of due process

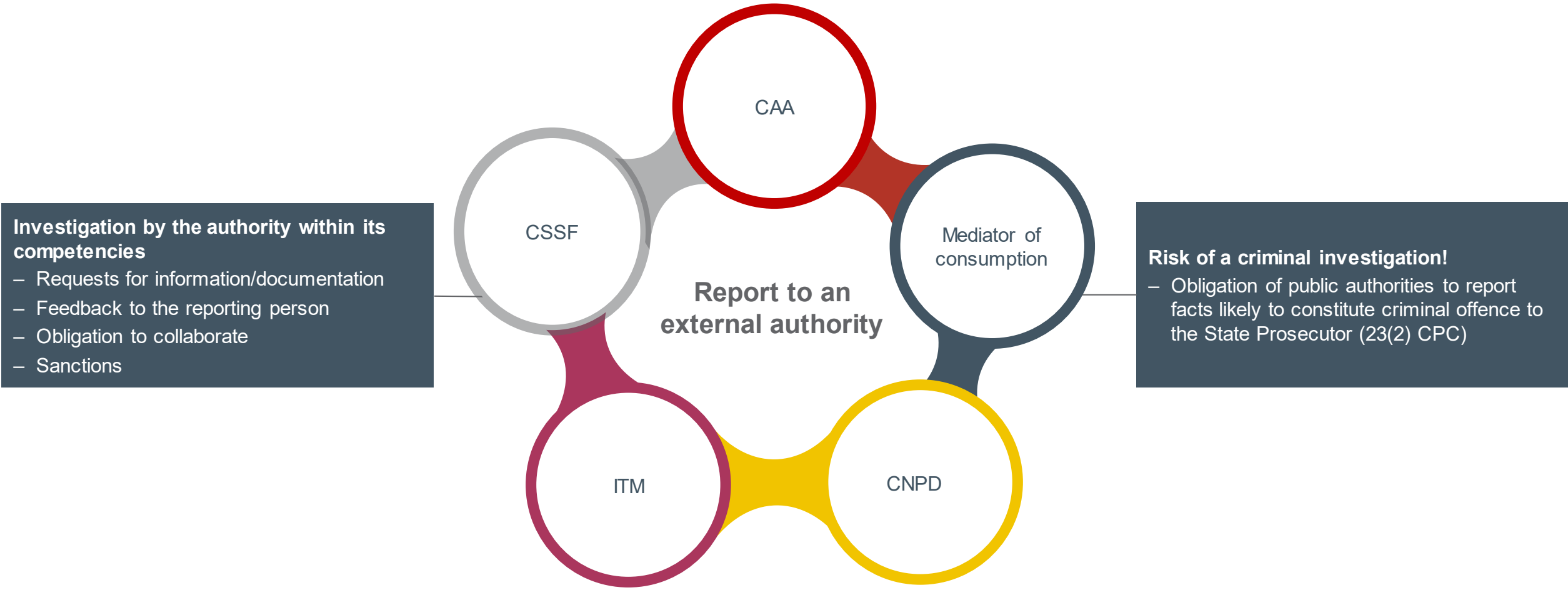


After reporting –  
External investigations





# Potential consequences of an external report



Practical views



# Key contacts



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# Questions?

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