

《Summary》

The Conflict Between SOX hotline mandate and European Privacy Law

Shinpei Ishida

In 2002, Sarbane-Oxley Act (SOX) was passed at United States as an effort to root out corporate fraud because of the scandals of Enron and Worldcom. SOX includes provision about employee-whistleblowing statute on the assumption that company-insiders are well-positioned to disclose information about corporate fraud. Particularly, Section 301 (4) of SOX requires the audit committee to establish “confidential, anonymous employee complaint procedure” (SOX hotline mandate).

However, SOX hotline mandate has been criticized in Europe in view of privacy law. French Data Protection Authority, CNIL (Commission nationale de l’informatique et des libertés), for example, declined the hotline system of McDonald’s France which complied with SOX hotline mandate. CNIL ruled that the implementation by an employer of a system designed to gather personal data from employees concerning behaviour contrary to company rules or contrary to the laws could only give rise to reservation in regard to the Law dated January 6, 1978 as amended, and notably Article 1 of such law, and so CNIL observed that anonymous hotline system could reinforce the risk of slanderous denunciation. As in France, German Data Protection Authority, Düsseldorf Kreis issued a detail opinion on SOX hotline

mandate. The purpose of this Article is to address the conflict between the SOX hotline mandate and European privacy law.