Whistleblower protection in the European Union

European Commission
2019 Whistleblower protection directive

April 2018: Commission proposal

The European Commission submits a proposal for a Directive on the protection of persons reporting on breaches of Union law as well as a Communication to support implementation by national authorities.

April and October 2019: co-legislators’ endorsement

On 16 April and 7 October 2019, the European Parliament and the Council, respectively, endorsed the Whistleblower Protection Directive.

Objectives

1. to strengthen the enforcement of EU law
2. to protect freedom of expression and freedom of the media
1. **Material Scope of Application**

**Breaches or abuses of EU law:**

a) in the areas of public procurement; financial services, prevention of money laundering and terrorist financing; product safety; transport safety; protection of the environment; radiation protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of network and information systems;

b) harming the EU’s financial interests;

c) relating to EU competition rules and corporate tax rules.
2. **PERSONAL SCOPE**

Reporting persons in the private or public sector who acquired information on breaches in a work-related context including, at least, the following:

- workers (incl. in non-standard employment relationships);
- self-employed service providers, including freelance, contractors, subcontractors and suppliers;
- shareholders and members of the management body of a company
- volunteers and unpaid trainees;
- persons working under the supervision and direction of contractors, subcontractors and suppliers;
- job applicants;
- persons whose employment relationship has ended or is yet to begin.
3. **Minimum Standards of Protection**

- Obligation to set up, in the public and the private sector, internal and external reporting channels, ensuring confidentiality;
- Clear and easily accessible information on procedures for reporting, protection and remedies available, and access to advice, free of charge;
- Obligation of those receiving the reports to diligently follow up and give feedback to the whistleblower within reasonable timeframe (not more than 3 months if internal reporting, up to 6 months max, if external reporting);
- Prohibition and punishment of retaliation, in all its various forms;
- Adequate remedies in case of retaliation, including reversal of burden of proof and interim relief;
- EU Member States may introduce or retain more favourable provisions.
4. CONDITIONS FOR PROTECTION

- Whistleblowers must have **reasonable grounds to believe** that i) the information reported is true at the time of reporting and ii) **falls within the scope** of the Directive.

- Whistleblowers are generally encouraged to use **internal channels** first, but they can choose whether to report first internally within the company/public entity or **directly externally** to the competent authorities.

- In order to **benefit from protection**, whistleblowers can report to the **media** only if:
  - no appropriate action was taken following (internal and) external reporting, or
  - they reasonably believe that there is:
    (i) imminent or manifest danger for the public interest
    (ii) there is a risk of retaliation or there is a low prospect of the breach being effectively addressed
5. OBLIGATION TO SET UP INTERNAL REPORTING CHANNELS

In the public sector

- All entities of the public sector (exceptions allowed: MS may exempt municipalities with less than 10,000 inhabitants, or less than 50 employees, or other entities with less than 50 employees + Member States may provide that internal reporting channels are shared between municipalities, or operated by joint municipal authorities (but internal channels to be distinct from the external channels).

In the private sector

- companies with 50 or more employees (i.e. medium-sized and large companies);

- companies of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing,

- Ms may decide that companies with fewer than 50 employees be obliged to set up internal channels when they perform high-risk activities
6. RETALIATION IS PROHIBITED + PROTECTION IN CASE OF RETALIATION

- Any form of retaliation is **prohibited** (long indicative list of what can be considered retaliation: dismissal, reduction in wages, intimidation, discrimination, failure to renew contract, harm to damage of reputation, blacklisting, etc.)

- In case of retaliation, **support measures** have to be offered:
  - e.g. easy access to independent information, legal aid, financial assistance and support...
  - Reversal of the burden of proof
  - Protection from liability for breaching non-disclosure clauses/agreements
  - Penalties against those that hinder reporting
  - Etc...
7. SAFEGUARDS FOR CONCERNED PERSONS AND FOR THE CREDIBILITY OF THE SYSTEM

The Directive also establish measures of protection for the “concerned person(s)”:

- Persons concerned by the reports fully enjoy the presumption of innocence, the right to an effective remedy and to a fair trial, and the rights of defence.

- Member States shall provide for effective and proportionate sanctions to dissuade malicious or abusive reports
Thank you for your attention!