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EU Whistleblower Directive 2019/1937 Transposition Essentials for Freedom of Expression and Media Freedom

All EU Member states are required to introduce new protections for whistleblowers under [EU Directive 2019/1937](#) by 16 December 2021. The Directive sets out minimum standards of protection for persons who report breaches of Union law as well as for intermediaries and associated third parties.

Transposition matters – Legal uncertainty silences whistleblowers. It is important to ensure that any uncertainty in the language of the provisions is interpreted positively in favour of whistleblower protection and media freedom and to advocate for stronger protections at national level. If the Directive is poorly understood and minimally transposed nationally, it risks undermining the very protections and media freedoms it is designed to promote. This tip sheet for policy makers, journalist organisations and civil society advocates, provides a snapshot of the key provisions to watch and what needs to be advocated at national level.

Article 2 - Material scope (limited types of concerns protected)

National whistleblower laws must extend protections beyond disclosures of ‘breaches of Union law’ to include breaches of national and local regulations and any other risk to the public interest whether or not work-related.

Article 3 - Relationship with other Union acts and national provisions

The Directive does not affect the application of EU or national laws relating to “secrecy” – be it classified information or legal and medical privilege - and leaves national security up to Member States. It is important for journalists and whistleblowers that public interest immunities and a public interest defence to prosecution are included to ensure any such prohibitions or penalties are proportionate.

Article 4 and 5 - Personal scope and definitions

Trade union representatives and legal advisors should be expressly protected under the Directive’s definition of “facilitator” as should journalists. Journalists should be protected as intermediaries channelling the information and making it public without being held liable for ancillary offences.



Article 6 - Conditions for protection

A whistleblower's motive must remain irrelevant and any reasonableness test of the belief that the information reported was true should be defined on the basis of a *disinterested person in a similar position, and knowledge could agree with the concern* to ensure protection is not limited.

Article 15 - Public disclosures

Whistleblowers must be able to determine the most appropriate channel to disclose the information – internally, to competent authorities and publicly. All internal reporting - including to line managers or as required by contractual or other job duties - must be protected. Public disclosures to journalists should not be restricted.

Article 21 - Protection against retaliation

Detrimental treatment should be reversible through robust *interim relief* provisions that stay any action being taken by an employer until a competent authority or court reviews the case. Any evidential burden to prove retaliation must not fall on the whistleblower, who should be fully compensated unless the employer can prove the action they took against the whistleblower was independently fair and not linked in any way to disclosure.

Article 16 and 22 - Confidentiality and Protection measures

Robust identity and source protections are essential. Anonymous reports must be allowed by law and facilitated. Whistleblowers must be fully protected if their identity becomes known or is guessed.

Recital 92 - Lawful acquisition

The recital restricts protection to whistleblowers who “unlawfully” obtained information. Whistleblowers must be immune from liability for making a disclosure even if the manner in which they acquired the information is not otherwise lawful, unless a crime has been committed that cannot be considered linked in any way to the whistleblowing. Journalists must use immunity to shield sources.

Recital 98 - Articulation with the trade secrets directive

Disclosure of trade secrets should be automatically protected if the Directive protections apply.