

WIN Series – Implementing the EU Directive on Whistleblowing

Whistleblowing protection laws must cover breaches of national law

The EU Directive on Whistleblowing requires all Member States to adopt common minimum standards for whistleblowing protection consistent with its provisions. The scope of protection is necessarily limited by considerations of EU competency and all EU Member States are encouraged to transpose the Directive horizontally to cover breaches of national as well as EU law. Minimal transposition nationally would mean only protecting persons reporting breaches of EU law. This will create an legal absurdity at national level where whistleblowers reporting serious matters of public interest or illegality are only protected if the breach is technically an infringement of Union law; largely neutralizing the purpose of the Directive. It makes no sense for a country's whistleblowing protection framework to protect *some* but not *all* breaches of the law and regulation in force in that country or to require its citizens to know the difference.

The Directive must be implemented to provide protection to persons reporting information which tends to show breaches of any legal obligation.

Argumentation / Refer to:

Recital 5 states: *“Member States could decide to extend the application of national provisions to other areas with a view to ensuring that there is comprehensive and coherent whistleblower protection at a national level.”*

The Commission has repeatedly encouraged extension of protection to cover national laws - see exploratory [report](#) & [statement](#).”

A hybrid system creates legal uncertainty as it is difficult to know whether a breach is a matter of EU law (see Principle 2 PACE 2014 [Recommendations](#) and s.14 which states *“...any member of the public can be reasonably expected to understand what is covered and what is not, and make an informed decision accordingly.”*

Lack of legal certainty undermines the spirit of the law which is to *promote* whistleblowing. An unequal system of protection may be unjustifiable under [constitutional](#) and human rights norms of equality before the law.

Highly influential Council of Europe 2019 [Resolution](#) Section 10 states: *“There are no grounds for giving less protection to national law and public interest at the national level than to the law and interests of the EU.”*

Protecting reporting of all wrongdoing is also necessary for consistency with a worker's fundamental rights including to freedom of expression under Article 10 of the ECHR see [Guja v. Moldova](#) (2008, ECtHR) and Article 19 UDHR, see s. IV (a) (1) UNGA 2019 [report](#).

Examples:

The [PIDA](#) (UK) protects disclosure of information which “in the reasonable belief of the worker tends to show” wrongdoing falling within a series of broad categories of wrongdoing including a breach of any legal obligation and its cover-up (see s. 43b).

For alternative draft wording see: the [exploratory report on transposition in Sweden](#) (page 36) and the [civil society draft law](#) for Spain (Article 4 s. 1 (h)).