

## WIN Series - Implementing the EU Directive on Whistleblowing:

### *All internal reporting must be clearly protected by law*

The EU Directive on Whistleblowing requires all Member States to adopt common minimum standards for whistleblowing protection. Employers must establish internal channels to receive reports. Most wrongdoing is disclosed internally with workers reporting concerns to supervisors or other line management. Professional duties or contractual job responsibilities may mandate reporting protocols (eg inspections or audit). Both may result in retaliation the threat of which chills free flow of information, necessary for organisational safeguards and informed decision-making. Forcing employees to report through designated officers as ‘middlemen’ inherently delays getting information into the right hands. If the law only protects reports made via singular channels, this will lead to unnecessary bottlenecks and creates a serious loophole in the framework which will fail to protect the majority of whistleblowing, undermining the spirit of the Directive.

**The Directive must be implemented to protect all internal reports of suspected wrongdoing to any responsible official whether or not they are the designated person or reporting channel.**

### Argumentation / Refer to:

Freedom to choose the most appropriate reporting channel *based on the individual circumstances of the case* is at the heart of the Directive.

Recital 33 defines internal reporting as: ‘...*the best way to get information to the persons who can contribute to the early and effective resolution of risks to the public interest.*’ Recital 47 states: ‘...*it is vital that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy...*’

Articles 7 (1) and 9 are however not sufficiently explicit that reporting to line managers or other internal reporting mechanisms is protected and must be carefully read and implemented to clarify that both are.

‘Chain of command’ and incident reporting lines are most *natural* and proximate to receive and address workplace wrongdoing (see s. 3.3 (para 44) [Council of Europe 2014 draft Resolution.](#))

### Example:

Under section 43 c (1) PIDA (UK), a disclosure is protected to any person senior to the worker, who has been expressly or implicitly authorized by the employer as having management responsibility over the worker.<sup>1</sup>

Recital 62, also emphasises: ‘...*protection where Union or national law requires the reporting persons to report to the competent national authorities, for instance as part of their job duties and responsibilities...*’

The law must not conflict with internationally recognized standards for institutional whistleblowing policies (eg draft ISO 37002) and parallel reporting regimes at EU and national level (e.g. civil aviation or child safeguarding.)

Not all organisations are obliged to establish reporting channels (eg employers with under 50 employees) but all workers need protection.

Protecting all internal reporting is consistent 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 2019 [report](#).

<sup>1</sup> See also S. 6 (1) & (2) Public Disclosure Act (Ireland) 2014