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MEMORANDUM

To: All Parties Concerned
From: Dr Vigjilenca Abazi, Co-Founder & Executive Director, European Whistleblowing Institute
Date: 25 November 2025
Re: Breach of EU Law by the proposed abolition of the Office for the Protection of Whistleblowers

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I. INTRODUCTION

This memorandum provides a legal assessment of the Slovak Government's proposal to abolish the Office for the Protection of Whistleblowers (WPO) and to establish, in its place, the Office for the Protection of Victims of Criminal Offences and Whistleblowers. The draft act, approved on 22 November 2025 and submitted to the National Council under an expedited legislative procedure, presents issues that extend beyond institutional redesign.

At stake is whether the Slovak Republic maintains the structural guarantees required for the effective application of EU law, including the independence of bodies performing oversight functions, the principles of legal certainty and non-regression, and the integrity of the Union's financial and rule-of-law architecture.

Recent developments indicate that the proposed abolition of the WPO does not occur in isolation but forms part of a broader pattern of structural deterioration of the rule of law in Slovakia. Since late 2023, the Slovak Government has pursued a series of sweeping legislative and institutional reforms that have weakened judicial independence, dismantled anti-corruption mechanisms, and narrowed the space for civil society and media freedom. These developments have prompted serious warnings from the European Commission, the European Parliament, and the European Public Prosecutor's Office, all of which have expressed concern that Slovakia's actions pose direct and significant risks to the EU budget and financial interests. The move to abolish the WPO therefore raises not merely questions of policy, but issues of constitutional significance for Slovakia's compliance with the structural requirements of the EU legal order.

The analysis that follows evaluates the proposed abolition of the WPO against relevant sources of EU law. It considers compliance with EU primary law and the principle of non-regression which set the limits on how Member States may restructure bodies applying EU law. It then assesses the measure under the EU Whistleblower Directive (EU) 2019/1937, focusing on the requirements of independence, confidentiality, and the prohibition of lowering protection. It further examines Slovakia's obligations under the Recovery and Resilience Facility Regulation (EU) 2021/241 and the Rule-of-Law Conditionality Regulation (EU) 2020/2092, both of which link institutional independence to the protection of the EU budget. Finally, it reviews the consequences for rights guaranteed by the EU Charter of Fundamental Rights and for the safeguards required under the GDPR. These legal standards form the basis for assessing whether the proposal complies with the Slovak Republic's obligations under EU law.

II. EU PRIMARY LAW

Article 2 TEU identifies the rule of law as a foundational value of the Union. The Court of Justice of the European Union has held that independence of bodies performing public-authority functions is a necessary component of this value, particularly where such bodies contribute to the domestic application of EU law.[1] The proposed abolition of the WPO, while it is exercising statutory powers in proceedings concerning unlawful conduct by the Ministry of Interior, constitutes a legislative intervention that undermines institutional independence. This targeted dissolution displaces existing oversight mechanisms and fails to satisfy the structural stability required by Article 2 TEU.

Article 4(3) TEU imposes an obligation on Member States to ensure the effective implementation of EU law. The WPO fulfils functions directly connected to the enforcement of Directive (EU) 2019/1937. The dissolution of the authority and the introduction of narrower protection criteria reduce the capacity of the Slovak Republic to discharge its obligations under the Directive. A legislative act that renders effective implementation structurally more difficult is incompatible with the duty of sincere cooperation.

Article 19(1) TEU requires that national systems provide remedies sufficient to ensure judicial protection of EU law rights. Administrative authorities entrusted with ensuring the protection of reporting persons constitute part of the domestic enforcement system. Independence, continuity, and functional stability are structural requirements. Prematurely ending the term of office of the WPO's leadership, not through statutory removal but through institutional abolition, weakens the remedy available to individuals seeking protection under EU law. The requirement of effective judicial protection is not met where the competent body is politically reconstituted.

The Court of Justice of the European Union has recognised, most notably in *Repubblika* (C-896/19),[2] that Member States must not adopt measures that reduce the level of protection of the rule of law below that which previously existed, insofar as such regression undermines the effectiveness of Article 2 TEU values. Although the Court has applied this principle primarily in relation to the independence of courts and judges, the underlying rationale, that national authorities responsible for the application of EU law must retain structural guarantees of independence applies by analogy to administrative bodies performing enforcement functions under EU law. At minimum, the principle of non-regression reinforces the requirement that administrative structures essential for implementing Union law may not be dismantled or politically reconstituted in a manner that diminishes their functional independence. The proposed abolition of the WPO, while it is seized of matters involving the Ministry of Interior, constitutes such a regression. In this context, Article 47 CFR, which guarantees an effective remedy before an independent body, is directly engaged: weakening or politically reconfiguring the competent authority undermines the Charter-level protection individuals must enjoy when asserting rights under EU law.

The Union relies on national authorities to identify, prevent, and report fraud and other irregularities affecting Union resources. Whistleblower protection serves as a mechanism for detecting such conduct. Weakening the institutional framework for whistleblowers whether by reducing the scope of protection, permitting retroactive withdrawal of existing protections, or diminishing independence reduces detection capacity. Insofar as irregularities relating to EU funds become less likely to be reported, the Slovak Republic does not comply with Article 325 TFEU.

[1] *Commission v Poland* (C-619/18) EU:C:2019:531; *Commission v Hungary* (C-288/12) EU:C:2012:687.
[2] *Repubblika v Il-Prim Ministru* (Case C-896/19) EU:C:2021:311.

III. EU WHISTLEBLOWER DIRECTIVE (EU) 2019/1937

The Directive requires that competent authorities operate independently and autonomously and that they possess the necessary powers and resources to perform their functions. Dissolving the existing authority and transferring its functions to a newly created institution led by an interim head appointed directly by the Speaker of Parliament removes the structural protections against political influence. The use of institutional abolition to achieve a change in leadership, rather than employing the statutory removal procedure, circumvents safeguards inherent in Article 11.

The Directive establishes strict confidentiality obligations for information relating to reporting persons. The immediate transfer of sensitive files to a politically appointed interim head increases the risk of unauthorised access and undermines the confidentiality regime required by Articles 16 and 17. No safeguards addressing this risk are provided in the draft act.

Article 25 obliges Member States not to introduce measures that reduce the level of protection previously afforded. The proposed act narrows the categories of persons eligible for preventive protection by imposing an employer-connection requirement. It further authorises retroactive review of existing protection decisions. Both measures materially reduce the level of protection available to reporting persons and therefore constitute a breach of Article 25.

IV. RECOVERY AND RESILIENCE FACILITY REGULATION (REGULATION (EU) 2021/241)

The RRF requires Member States to adopt reforms that contribute to strengthening the rule of law and to maintain their durability. The WPO, identified in Slovakia's Recovery and Resilience Plan as part of its anti-corruption architecture, constitutes such a reform. Article 19(3)(b) requires that reforms supported by the Facility enhance institutional quality and independence. Eliminating an independent oversight authority and replacing it with a body lacking comparable institutional guarantees constitutes regression rather than strengthening.

Where milestones or targets are no longer fulfilled, the Commission may suspend disbursements. The independence and functioning of the WPO formed part of milestones relating to integrity and anti-corruption. Abolition of the Office renders the Slovak Republic non-compliant with these milestones. Article 24 authorises recovery where reforms financed by the Facility are reversed or rendered inoperative. To the extent that RRF funds contributed to the establishment or functioning of the WPO, its abolition introduces grounds for repayment.

V. CONDITIONALITY REGULATION (REGULATION (EU) 2020/2092)

The Conditionality Regulation operates on the premise that certain structural features of the rule of law are indispensable to the Union's financial architecture.[3] It does not require a finding of actual fraud; it suffices that national measures create a systemic risk to the sound financial management of the Union budget. The proposed abolition of the Whistleblower Protection Office and its replacement with an institution subject to direct political appointment constitutes such a risk.

Article 2(a) identifies institutional independence, legality, and legal certainty as core elements of the rule of law. The WPO performs a control function that enables disclosure of irregularities within public

[3] A formal complaint under Regulation (EU) 2020/2092 was submitted by The Good Lobby Profs to the European Commission on 3 June 2025, documenting systemic rule-of-law backsliding in Slovakia. See The Good Lobby Profs, 'Press Release: The Good Lobby Profs File Rule of Law Complaint Against Slovakia with the European Commission' (Brussels, 3 June 2025).

administration, including those relating to EU funds. Removing the Office while it is exercising oversight vis-à-vis the Ministry of Interior amounts to a deliberate intervention in an independent authority. The absence of any objective grounds for abolition, combined with the legislative method chosen, gives rise to a presumption of arbitrariness incompatible with the principle of legality.

Under Article 3, a breach is relevant when it impairs or risks impairing the functioning of authorities responsible for financial control, monitoring, or audit. Whistleblower protection constitutes an integral part of the national integrity framework through which irregularities affecting EU resources are detected. By narrowing the scope of protection, permitting retroactive review of protection decisions, and transferring competence to a politically dependent institution, the proposal diminishes reporting channels and therefore weakens the preventive architecture envisaged by the Regulation. This constitutes a structural impairment as defined by Article 3.

The link required under Article 4(1) a sufficiently direct connection between the breach of the rule of law and a risk to the Union budget is met. First, the WPO has statutory competence in areas where EU funds are administered, including public procurement and internal administrative decision-making within State bodies. Disrupting its institutional continuity affects ongoing procedures and undermines its capacity to identify misconduct. Second, the retroactive nature of the proposal reduces legal certainty for individuals who have already reported wrongdoing involving EU funds. A foreseeable decline in reporting follows from such legislative conditions, generating a systemic risk for the Union's financial interests.

Article 6 empowers the Commission to act where a Member State "fails to prevent" rule-of-law breaches that affect or risk affecting the Union budget. The abolition of an independent authority performing oversight functions satisfies this threshold. The Court of Justice has consistently held that legislative restructuring used to remove or weaken institutions vested with public authority constitutes a breach where it undermines functional independence essential for the application of EU law.

VI. EU CHARTER OF FUNDAMENTAL RIGHTS

The Charter establishes binding guarantees relevant to the protection of reporting persons and the institutional framework that supports their rights. Article 11 protects freedom of expression, understood to include the disclosure of information on matters of public interest. Legal systems must ensure conditions under which individuals can report wrongdoing without fear of retaliation. Narrowing the scope of persons eligible for protection and enabling retroactive review of protection decisions alter the risk calculus for potential reporting persons. Such structural conditions deter individuals from disclosing information concerning unlawful conduct, including conduct that may implicate public authorities. Measures that remove existing protections or create uncertainty as to their durability constitute a direct interference with Article 11.

Article 41 guarantees the right to good administration, which encompasses impartiality, fairness, and respect for legitimate expectations. Fixed-term mandates for the leadership of independent authorities are designed to ensure that decision-making is insulated from political intervention. Legislative restructuring that terminates such mandates prematurely especially in the absence of objective justification fails to satisfy the principle of good administration. Individuals who have relied on the WPO's statutory independence in seeking protection face a diminished level of administrative impartiality under the proposed structure.

Article 47 guarantees an effective remedy and a fair hearing in matters concerning rights under EU law. Administrative authorities entrusted with implementing Directive (EU) 2019/1937 form part of the national remedial system through which reporting persons assert their rights. Independence, continuity, and predictability of the competent authority are structural preconditions for the effectiveness of this remedy. Dissolving the WPO and removing its leadership before the expiry of their statutory terms, not through an

individualised removal procedure but through wholesale institutional abolition, deprives individuals of a stable administrative channel for asserting their rights. This undermines the availability of an effective remedy and is incompatible with Article 47.

Articles 7 and 8 protect the private life and personal data of individuals. The WPO processes highly sensitive data, including information identifying reporting persons, details of alleged wrongdoing, employment relations, and other personal circumstances. These data sets are held under a statutory confidentiality regime and processed by an independent authority to minimise risks of retaliation and misuse. By abolishing the WPO and transferring its files to an interim authority appointed directly by the Speaker of Parliament, the proposed legislation alters the institutional conditions under which these data are processed. Such a transfer immediate, untested, and lacking procedural safeguards creates a foreseeable risk of unauthorised access. The measure does not satisfy the requirements of necessity and proportionality that Articles 7 and 8 impose, particularly in light of the availability of less intrusive alternatives that would preserve data confidentiality.

VII. GENERAL DATA PROTECTION REGULATION

The proposed legislation alters the identity of the controller by abolishing the WPO and transferring its functions and data holdings to a newly created authority under interim leadership appointed directly by Parliament. Such a change must satisfy the GDPR's requirements of lawfulness, fairness, purpose limitation, and security. The draft act does not include a risk assessment, transition conditions, or provisions ensuring continuity in data-protection safeguards. The transfer of all files including those containing sensitive data revealing identity, employment conditions, and allegations of wrongdoing to new political leadership creates an environment in which risks of unauthorised access and misuse cannot be excluded. This outcome is incompatible with Article 5(1)(f), which requires integrity and confidentiality of processing. The WPO's statutory independence contributes to demonstrating that data are processed for the limited and legitimate purpose of providing protection under whistleblowing legislation. By contrast, transferring the same data to an authority that lacks institutional independence and possesses unclear functional safeguards raises doubts about the legitimacy and necessity of continued processing under the new structure. A significant alteration of the controller cannot be justified merely by legislative redesign when the redesign introduces risks that are avoidable.

VIII. CONCLUSION

The proposed abolition of the Whistleblower Protection Office and the establishment of a new authority under conditions of direct political appointment constitute measures with significant implications for the Slovak Republic's obligations under EU law. The legislative technique chosen for complete dissolution of an independent authority while it is exercising its statutory powers results in breaches of primary EU law, including Articles 2, 4(3), 19 TEU, and Article 325 TFEU. It also fails to comply with Directive (EU) 2019/1937 by reducing the level of protection for reporting persons, undermining confidentiality safeguards, and removing institutional independence. Further, the proposal reverses reforms financed under the Recovery and Resilience Facility and therefore engages the mechanisms for suspension or recovery of EU funds. It creates a systemic risk to the Union budget within the meaning of the Conditionality Regulation. The Charter rights of individuals who rely on the protection regime, including the rights to private life, data protection, freedom of expression, an effective remedy, and good administration, are adversely affected. The GDPR requirements for lawful and secure processing of sensitive personal data are not met. The cumulative effect of these deficiencies indicates that the proposed measure is incompatible with the Slovak Republic's obligations under EU law. Adoption of the proposal would place the Slovak Republic in a position of non-compliance and expose it to legal, financial, and institutional consequences at the Union level.