

# RAISING THE FLOOR:

## NATIONAL LAWS UNDER THE EU WHISTLEBLOWER DIRECTIVE



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# ***A Government Accountability Project report prepared for and with the active support of the Whistleblowing International Network***

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Through litigating whistleblower cases, publicising concerns and developing legal reforms, Government Accountability Project's mission is to protect the public interest by promoting government and corporate accountability.

Government Accountability Project's expertise ranges across issue areas, from government to private sector, with programmes in corporate and financial accountability, the environment and energy, the food system, national security and public health. Government Accountability Project has empowered over 10,000 whistleblowers with legal protection and advocacy expertise so the truth they tell makes a positive impact.

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Government Accountability Project prepared this report for the Whistleblowing International Network (WIN), an international membership organization and leading centre of global civil society expertise on whistleblowing law and practice.

Established in 2018, WIN works to strengthen the legal, technical and strategic skills of civil society around the world to support whistleblowers in the public interest.

Whistleblowing International Network was formed to respond to an urgent need to work together and share specialist skills as the importance of whistleblowing as a catalyst for holding power to account continues to increase around the world. Learn more: [www.whistleblowingnetwork.org](http://www.whistleblowingnetwork.org).

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*Raising the Floor: National Laws under the EU Whistleblower Directive*

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# Table of Contents



<b>Acknowledgements</b>	6
<b>Executive Summary</b>	8
Raising the Floor: National Laws under the EU Whistleblower Directive	8
Compliance Snapshot	8
Where Member States Perform Strongest	9
Where Structural Weaknesses Persist	10
Structural Imbalance: Reporting Architecture vs. Enforceability	12
Convergence Since 2018	12
Significance for EU Governance and Policy	13
<b>Part I: Methodology and Findings</b>	14
Introduction	14
Methodology	16
A. Scope and Analytical Framework	16
B. Normative Baselines	17
C. Data Sources and Legal Review	17
D. Scoring and Classification Methodology	18
E. Compliance Index and Rankings	19
Sub-Indicator Framework	20
F. Quality Assurance and Peer Review	21
G. Cut-Off Date	21
H. Limitations	21
Findings	22
A. Overall Systemic Pattern	22
B. Best Practices and Floor-Raising Effect	25
C. Strongest Areas of Compliance	28
D. Weakest Areas of Compliance	30
<b>Part II: 20 Best Practice Standards and Results</b>	37

**Part III: Recommendations** ..... 56

1. Comprehensive Horizontal Rights that Harmonise EU Directive and National Law (Standard 1) .....57

2. Broad Disclosure Rights with No Speech Loopholes (Standards 2, 3, and 8) ..... 58

3. Protection Against Spillover and Non-Employment Retaliation (Standards 4 and 5)..... 58

4. Confidentiality and Comprehensive Anti-Retaliation Coverage (Standards 6 and 7) .....59

5. Access to Justice and Fair Evidentiary Rules (Standards 9, 10, and 11).....59

6. Effective Remedies and Financial Viability (Standards 12, 13, and 14) ..... 60

7. Personal Accountability and Sanctions for Reprisals (Standard 15) ..... 60

8. Institutional Channels and Whistleblower Enfranchisement (Standards 16 and 17) ..... 60

9. Education, Outreach, and Transparency (Standards 18 and 19) ..... 61

10. Review and Continuous Improvement (Standard 20) ..... 61

Endnotes..... 62

**Annexes**..... 63

Annexe N°1. Country Rankings. .... 64

Annexe N°2. Standard Indicator Ranking and Sub-Indicator Index ..... 65

Annexe N°3. Remedy Definitions and Terms ..... 74

Annexe N°4. Selected National Protections Exceeding Whistleblower Directive’s Requirements ..... 79

Annexe N°5. Significant Implementation Deviations ..... 81

Annexe N°6. Country Reports (Access and Downloads) ..... 85



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# Executive Summary



## Raising the Floor: National Laws under the EU Whistleblower Directive

Directive (EU) 2019/1937 has reshaped the legal landscape of whistleblower protection across the European Union. This study evaluates each Member State against 20 best-practice standards grounded in the Directive, EU fundamental rights, and established international norms.

It finds that while the Directive has successfully eliminated legislative gaps, significant disparities remain in the depth, coherence, and enforceability of protection. The principal compliance gap is whether legal frameworks ensure that whistleblowers can make disclosures safely only to designated audiences, realistically prevail in retaliation proceedings, and obtain full restoration when harm occurs.

The most significant structural innovation introduced by the Directive is the mandatory creation of whistleblower channels by all significant public and private sector employers. If implemented properly, these channels institutionalize whistleblowing as one of society's fundamental checks against corruption.

However, if implemented in bad faith, there could be traps that provide advanced warning to corrupt bureaucracies of evidence exposing their corruption. The channels could become an unprecedented opportunity for coverups and advance retaliation to discredit the whistleblower. The stakes are high for the Directive's anti-corruption objectives.

## Compliance Snapshot

**Average score:** 14.2/20 (71.2%)

**Range:** 10–18

**No Member State fully compliant**

**No jurisdiction below 10/20**

The Directive has raised the legal floor for whistleblower protection across the Union. Most Member States cluster within the 13–16.5 range, reflecting

compliance with minimum Directive requirements rather than uniformly robust systems of protection.

## Where Member States Perform Strongest

The highest levels of compliance appear in areas where the Directive introduced clear structural obligations affecting eligibility for protection, the scope of protected disclosures, and the institutional systems for receiving and processing reports.

One of the Directive's clearest structural successes is the near-elimination of motive-based "good faith" barriers, which historically allowed employers to litigate whistleblowers' intent rather than the substance of disclosures.

### Highest net compliance across indicators and sub-indicators:

- **Personal scope of protection (Standard 5)—94.4% net compliance.** Protection widely extends beyond employees to contractors, former workers, and other natural or legal persons connected to the workplace, such as shareholders and the corporation where a whistleblower works.
- **Comprehensive retaliation protection (Standard 7)—90.7% net compliance.** Most Member States prohibit a broad range of retaliatory acts affecting employment and professional status, including protection against retaliatory criminal and civil litigation – sometimes referred to as Strategic Lawsuits Against Public Participation (SLAPP).
- **Ban on gag orders and speech waivers (Standard 8)—88.9% net compliance.** Most national frameworks invalidate contractual clauses that attempt to restrict protected disclosures.
- **Whistleblower enfranchisement and follow-up (Standard 17)—88.9% net compliance.** Most Member States require acknowledgment, investigation, and feedback obligations within reporting systems.
- **Elimination of motive-based disqualification ('good faith' tests)—87.0% net compliance.** One of the Directive's clearest structural successes is the near-elimination of subjective 'good faith' barriers, which historically allowed employers to litigate whistleblowers' motives rather than the substance of disclosures. Most Member States now apply the Directive's objective reasonable belief standard. In a small number of jurisdictions, the language of 'good faith' persists, but it has been reformulated so that protection no longer depends on proving motive.

- **Protection of public disclosures under Directive criteria (2B)—87.0% net compliance.**
- **Education and outreach obligations (Standard 18)—85.2% net compliance.**
- **Transparency (Standard 19)—85.2% net compliance.**
- **Confidentiality safeguards within external reporting channels (16B)—85.2% net compliance.**
- **Broad subject-matter scope (Standard 3)—83.3% net compliance.**
- **Protection against spillover retaliation (Standard 4)—81.5% net compliance. This includes the protection of facilitators in 70.4% of countries.**

Several of the Directive's core safeguards, including personal scope, reporting-system follow-up, and confidentiality protections, show no zero scores across Member States, indicating that the Directive has successfully closed fundamental legislative gaps across the Union.

## Where Structural Weaknesses Persist

The most significant weaknesses arise in areas that determine whether protection functions in practice rather than in principle.

### Highest net non-compliance across indicators and sub-indicators:

- **Duty speech protection (2C)—85.2% net non-compliance.** The weakest area across the framework. In most Member States, disclosures made in the course of professional duties receive protection only if they follow prescribed reporting channels, leaving routine, work-related disclosures without protection. But that is the overwhelming context to communicate protected information. This also increases reliance on institutional mechanisms that may present conflicts of interest.
- **Broad disclosure rights ('no loopholes') (Standard 2)—72.2% net non-compliance.** Many national frameworks restrict the audiences form, timing or context form under which disclosures outside designated channels are protected, limiting the Directive's principle that whistleblowers should be free to report to the most appropriate audience under the circumstances. For example, 5.5 countries do

not offer protection until the ‘moment of’ a whistleblowing report.<sup>2</sup> This leaves whistleblowers defenceless when gathering the evidence to prove corruption, as well as all those who facilitate or associate with them.

- **Restoration of status or professional position (12C)—64.8% net non-compliance.** More than half of Member States do not clearly guarantee reinstatement or restoration of employment, professional status, or equivalent legal position following retaliation.
- **Non-economic damages (12B)—59.3% net non-compliance** This covers intangibles such as damages from emotional distress, loss of reputation and similar consequences.
- **Reverse burden of proof (Standard 11)—59.3% net non-compliance.** In several jurisdictions, evidentiary rules do not meaningfully shift the burden to employers. Some national formulations allow employers to prevail by invoking broadly framed ‘justified reasons’ based on investigations initiated because of whistleblowing, defeating the Directive’s requirement that actions be proven unrelated to whistleblowing and inviting further retaliation.
- **Economic damages and back pay (12A)—55.6% net non-compliance.**
- **Effective and dissuasive sanctions (15B)—55.6% net non-compliance.** Although personal liability for retaliation is frequently recognised in law, sanction frameworks often lack demonstrable deterrent strength.
- **Make-whole compensation overall (Standard 12)—50% net non-compliance.** This is the bottom line whether whistleblowers who win their cases get back to even. As a result, many will ‘lose by winning.’
- **Interim relief pending proceedings (Standard 13)—44.4% net non-compliance.** Without temporary reinstatement, salary continuation, or comparable safeguards during proceedings, whistleblowers may face severe financial pressure during prolonged litigation.
- **Personal Accountability for Reprisals (Standard 15)—44.4% net non-compliance.**

Taken together, the findings reveal deficiencies concerning enforceability, economic security, and deterrence. These elements are part of the back-end mechanisms that determine whether whistleblower rights can be

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<sup>2</sup> Belgium is counted as 0.5 instead of 1 because it only applies this restriction to the public sector law.

vindicated under real litigation conditions. The resulting pattern shows whistleblowers may remain procedurally or financially fragile when tested in practice.

## **Structural Imbalance: Reporting Architecture vs. Enforceability**

The institutionalisation of internal and external reporting channels represents the Directive's most significant structural innovation.

**For the first time, major public and private institutions across the Union are required to establish formal whistleblower systems. Properly designed and implemented, these channels legitimise reporting and embed accountability within organisations.**

However, where independence safeguards and conflict of interest protections are weak, channels risk functioning as advance opportunities for cover-ups as well as presenting an opportunity for retaliation to discredit whistleblowers before their evidence gets into the right hands. The effectiveness of this architecture therefore depends not merely on its existence but on its structural integrity.

Across Member States, a consistent disparity is evident. Reporting architecture has been widely implemented: formal channels exist, eligibility thresholds are defined, and retaliation is broadly prohibited.

By contrast, the enforceability components of protection—legitimate channel structures, burden-shifting mechanisms, interim relief capable of preserving income, full economic and non-economic restoration, and disciplinary sanctions with meaningful deterrent effect—remain uneven in both design and strength.

The resulting pattern is one in which whistleblower protection is formally recognised but may remain procedurally or financially fragile when tested in retaliation proceedings. The divergence between rights on paper and structural enforcement mechanisms represents the principal systemic challenge identified in this study.

## **Convergence Since 2018**

Measured against the 2018 baseline established in Government Accountability Project and International Bar Association, *Are*

*Whistleblowing Laws Working? A Global Study of 20 Best Practices*, which assessed 13 EU Member States with comprehensive whistleblower laws at the time, compliance ranged from 1 to 16 out of 20. Post-Directive transposition, the range across all 27 Member States is now 10 to 18. Several Member States that previously scored below 5/20 now operate comprehensive statutory regimes, and seven countries improved by more than 9 points.

However, few Member States exceed 17/20, and none have achieved full alignment with all best-practice standards.

## **Significance for EU Governance and Policy**

Whistleblower protection is not solely an employment safeguard. It is a structural anti-corruption tool for enforcement of Union law, internal market integrity, and democratic accountability.

The findings suggest that while the EU now possesses a common statutory foundation, that foundation's durability depends on strengthening the mechanisms that receive reports, and on securing full restoration for harmed whistleblowers, evidentiary fairness, interim financial stability, and meaningful deterrence.

Importantly, the data indicates that many Member States are within one or two targeted reforms of significantly improving their compliance position. Strengthening the reverse burden standards, guaranteeing restoration of status, providing interim relief, and strengthening sanction effectiveness could materially elevate protection without requiring amendment of the Directive itself.

## SECTION 1

# Part I: Methodology and Findings



## Introduction

Whistleblowers routinely supply the first actionable information about corruption, fraud, threats to public health and safety, environmental harm, and other abuses that would otherwise remain concealed.

**Effective whistleblower protection is therefore not only an employment safeguard—it is an accountability mechanism that supports democratic governance and the rule of law.**

The adoption of Directive (EU) 2019/1937 followed a series of high-profile cross-border scandals that exposed the central role of whistleblowers in uncovering large-scale misconduct affecting the internal market and the public interest. Disclosures relating to tax avoidance, financial misconduct, environmental harm, data protection failures, and public health and safety, often spanning multiple Member States, demonstrated that individuals who reported wrongdoing frequently faced retaliation, legal uncertainty, or professional exclusion, while legal protections varied widely across national systems.<sup>3</sup>

Notable cases such as LuxLeaks, the Panama Papers, the Dieseltgate emissions scandal, and subsequent revelations in the financial and digital sectors highlighted both the systemic value of whistleblower disclosures and the fragmentation of legal protection across the Union.

In several instances, the absence of clear or effective safeguards deterred reporting or exposed individuals to prolonged legal and professional consequences, even where disclosures served a clear public interest.<sup>4</sup>

<sup>3</sup> European Commission, *Impact Assessment accompanying the proposal for a Directive on the protection of persons reporting on breaches of Union law*, SWD (2018) 116 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2018:116:FIN>; European Parliament, *Resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest*, P8\_TA (2017)0402. [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0402\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0402_EN.html)

<sup>4</sup> European Parliament, *Resolution of 16 December 2015 on tax rulings and other measures similar in nature or effect (TAXE)*, P8\_TA (2015)0457. <https://www.europarl.europa.eu/doceo/document/TA-8-2015->

In response, EU institutions increasingly recognised that uneven national protections undermined the effective enforcement of Union law, distorted competition within the internal market, and weakened public trust in regulatory systems. Beginning with sector-specific measures and parliamentary resolutions, this recognition culminated in the adoption of Directive (EU) 2019/1937 as the first horizontal EU instrument dedicated exclusively to whistleblower protection.<sup>5</sup>

The Directive was designed to foster anti-corruption efforts by protecting individuals from retaliation through minimum standards for safe reporting. Its adoption reflected a shift toward treating whistleblower protection as an integral component of effective governance, enforcement, and accountability across the European Union.<sup>6</sup>

The Directive also operates within a wider rights environment: EU fundamental rights protect freedom of expression and guarantee an effective remedy and fair trial, and European Court of Human Rights case law has long recognised that public-interest disclosures can fall within Article 10 of the European Convention on Human Rights when assessed against established criteria.

At the same time, the Directive's scope is shaped by the allocation of competences under EU primary law. Member States retain exclusive responsibility for national security and continue to exercise primary responsibility in areas such as criminal law enforcement and the organization of their judicial and administrative systems, subject to the limits and shared competences established by the EU Treaties, especially the Treaty on European Union and the Treaty on the Functioning of the European Union.

Over decades, Member States also have developed whistleblower protections in sector-specific ways, often in response to domestic needs and international obligations such as the United Nations Convention against

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[0457\\_EN.html](#); European Parliament, *Report of the Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (Panama Papers Inquiry)*, A8-0357/2017.

[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_ATA\(2017\)614619](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2017)614619); European Parliament, *Resolution of 27 October 2015 on emission measurements in the automotive sector (2015/2865(RSP))*, P8\_TA(2015)0375. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2017%3A355%3ATO>

<sup>5</sup> European Commission, *Strengthening whistleblower protection at EU level*, COM (2018) 214 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0214>; Court of Justice of the European Union, *Case C-682/15, Berlioz Investment Fund SA v Directeur de l'administration des contributions directes*, EU:C:2017:373, para. 49. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0682>

<sup>6</sup> Directive (EU) 2019/1937, Recitals 1-5. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1937>; European Commission, *Proposal for a Directive on the protection of persons reporting on breaches of Union law*, COM (2018) 218 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0218>

Corruption and Council of Europe guidance.<sup>7</sup>

These realities have produced a complex legal landscape. In many jurisdictions, Directive transposition laws coexist with pre-existing regimes that differ in scope, procedures, and remedies. Fragmentation can create uncertainty about whether a report is protected, which channels must be used, and what standards apply—conditions that may deter reporting and complicate compliance for employers and authorities. This report responds to that challenge by offering a structured benchmark for assessing whether legal frameworks are coherent, accessible, and capable of delivering effective protection in practice.

## Methodology

### A. Scope and Analytical Framework

This report evaluates national whistleblower protection laws in all 27 European Union Member States using a technical benchmark consisting of 20 best-practice legal standards. These standards operationalise the substantive and procedural requirements of Directive (EU) 2019/1937 and related European human rights and good governance norms.

This report evaluates each Member State's operative whistleblower protection framework as a whole. The unit of analysis includes:

- legislation transposing Directive (EU) 2019/1937;
- binding implementing measures adopted pursuant to transposition; and
- pre-existing national whistleblower protection regimes that continue to operate in parallel and materially affect clarity of rights or access to protection.

These elements are assessed collectively to determine whether a national law provides coherent and functional legal protection—meaning whether the legal architecture, as enacted, can provide effective, accessible, and deterrence-capable protection to whistleblowers in practice.<sup>8</sup>

Whistleblowing International Network and Government Accountability Project's standards for assessing compliance with the Directive are largely

<sup>7</sup> Treaty on European Union Articles 4(2), 5(1)–(2); Treaty on the Functioning of the European Union Articles 2–6, 72, 82–83. See also United Nations Convention against Corruption, Article 33; Council of Europe, Recommendation CM/Rec (2014)7 on the Protection of Whistleblowers (2014).

<sup>8</sup> References to protection 'in practice' refer to the functional capacity of legal frameworks as designed, not to empirical measurement of reporting behaviour or case outcomes.

consistent with the best practice standards of the Council of Europe, the Organization for Economic Cooperation and Development, the International Bar Association, and Transparency International. Although we utilize substantially similar principles, we conformed the standards to meet the specifics of the EU Directive for this study.

Several of the 20 benchmark standards contain multiple legally distinct but functionally related elements. For analytical transparency, these were evaluated through sub-indicators that informed the final categorical rating (substantial, partial, or non-compliance). Sub-indicators were not scored independently but were used to ensure consistent and legally grounded classification.

## **B. Normative Baselines**

The benchmark standards were derived through a structured synthesis of:

- Directive (EU) 2019/1937 and its Recitals;
- European Court of Human Rights jurisprudence on public-interest disclosures under Article 10 ECHR;
- Council of Europe Recommendation CM/Rec (2014)7; and
- Article 33 of the United Nations Convention against Corruption.

The twenty standards applied in this report are listed in PART II—20 Best Practice Standards and form an integrated system of rights, remedies, institutional safeguards, and accountability mechanisms.

Certain issues identified during country assessments were not incorporated as formal standards (also referred to in this report as “indicators”) because they arise infrequently or stem from how national courts or authorities interpret and apply whistleblower protections rather than from the statutory framework itself. However, where such issues could materially undermine the Directive’s objectives, they are highlighted separately in Annexe 5.

## **C. Data Sources and Legal Review**

To assess the operative framework described in Section A, researchers conducted a systematic review of primary legal materials for each Member State, including:

- national transposition statutes and implementing decrees;

- labour, administrative, criminal, and procedural codes governing whistleblowing and retaliation;
- binding regulations, official guidance, and administrative instruments affecting reporting or protection; and
- publicly available constitutional, supreme court, appellate, and other court jurisprudence interpreting whistleblower protections or related rights, where accessible and relevant.

These sources were reviewed to identify applicable standards, deviations from Directive requirements, and the practical interaction of parallel legal regimes. Due to significant variations in publication practices, language accessibility, and availability of national case law, a comprehensive comparative review of judicial decisions was not feasible across all Member States.

However, country assessments were reviewed by subject matter experts with familiarity with relevant national and regional jurisprudence, and such expertise informed the interpretation of statutory design, institutional practice, and identified risks where applicable.

Special attention was paid to significant deviations from Directive requirements, including national provisions that restrict scope, impose higher thresholds, limit remedies, or otherwise undermine the Directive's protective purpose. A consolidated summary of these deviations is provided in Annexe 5.

## **D. Scoring and Classification Methodology**

Each Member State was assessed against twenty best-practice standards using a structured and uniform rubric as indicated below.

- **Substantial compliance (1 point):** The national legal framework functionally meets the Directive's required baseline protections without material loopholes.
- **Partial compliance (0.5 point):** The standard is recognised in national law but subject to material gaps, ambiguity, structural limitations, or procedural fragmentation that weaken its protective effect.
- **Non-compliance (0 points):** The required protection is absent or structured in a manner that defeats its intended function.

A score of 1 reflects substantial alignment, not literal or exhaustive

replication of every drafting element. Substantial compliance was awarded where national law clearly and operatively mirrors the Directive's core protections, even if minor drafting variations or structural differences exist. The assessment therefore distinguishes between *formal textual replication* and *functional legal equivalence*.

Partial compliance was assigned where one Directive-mandated category was materially incomplete, ambiguities created meaningful uncertainty, protections were qualified or inconsistently structured, or procedural features materially narrowed practical enforceability. Isolated omissions affecting a minor sub-category did not automatically result in a downgrade where the overall framework reflected substantial alignment.

Several standards were analysed using structured sub-indicators to ensure consistency and transparency. Sub-indicators informed the categorical assessment but did not independently alter the scoring structure.

Where national provisions exceeded the Directive's minimum requirements, such strengthening measures were noted. However, voluntary expansions beyond the Directive's baseline did not increase overall scores unless they materially affected the functional operation of a benchmark standard. Conversely, minor drafting omissions did not result in non-compliance where the functional scope of protection remained intact.

This methodology measures compliance against the Directive's required baseline protections, focusing on whether whistleblowers receive clear, accessible, and enforceable safeguards in practice. The emphasis is therefore on legal effect and operational coherence rather than stylistic drafting differences or voluntary policy expansions.

## **E. Compliance Index and Rankings**

To enable cross-country comparison, categorical ratings were converted into a numerical Compliance Index using equal weighting:

- **substantial compliance = 1 point**
- **partial compliance = 0.5 point**
- **non-compliance = 0 points.**

Each Member State's total points across the 20 standards were summed (maximum 20) and converted to a 0–100 index score. Rankings are presented in Annexe 1 and summarised in the Country Scorecard.

## Sub-Indicator Framework

For selected core indicators, the study introduced structured sub-indicators to allow for a more granular analysis of key trends and recurring strengths or weaknesses across Member States. These sub-indicators were developed to disaggregate complex standards into their principal components and thereby facilitate clearer comparative findings and thematic conclusions.

Sub-indicators did not affect the official country scores or country rankings, which were based solely on the 20 primary indicators. However, sub-indicators were analysed independently for cross-country pattern detection and for identifying the strongest and weakest compliance findings across the study.

The sub-indicators were applied in the following areas:

### Remedies and Damages

- 12A–Economic damages/back pay/reinstatement
- 12B–Non-economic damages (moral harm, distress, reputational injury)
- 12C–Restoration of status, contract, licence, or equivalent relief
- 13A–Interim relief available pending proceedings
- 14A–Legal aid or reimbursement of legal fees and costs
- 15A–Liability of natural persons (e.g. managers or officials)
- 15B–Sanctions that are effective, proportionate, and dissuasive

### Qualification Standards ('Merits Test')

- 10A–Reasonable belief/suspicion/grounds
- 10B–Absence of motive-based disqualifiers (e.g. 'good faith' tests)

### Scope of Protected Disclosure

- 2C–Protection for duty speech
- 2A–Freedom to choose internal versus external reporting
- 2B–Protection for public disclosures meeting Directive criteria

## **Institutional Safeguards**

- 16A–Institutional independence/absence of conflicts of interest
- 16B–Confidentiality safeguards within reporting channels
- 16C–Training and competence requirements

A full presentation of sub-indicator findings is provided in Annexe 2. These findings support the thematic analysis in the main report but do not affect or replace the standard indicators that informed the overall country scores and rankings.

## **F. Quality Assurance and Peer Review**

Each standard-by-country assessment was subject to:

- cross-review by at least one additional subject matter expert; and
- reconciliation of coding differences using the standardised scoring methodology.

## **G. Cut-Off Date**

All assessments reflect national laws and authoritative implementing instruments in force as of 31 December 2025. Amendments adopted after this date are outside the scope of this edition.

## **H. Limitations**

This report primarily evaluates legal design and institutional capacity, not individual case outcomes. However, structural features that predictably undermine access to remedies, chill reporting, or prevent effective enforcement were treated as material deficiencies.

The analysis does not purport to exhaustively catalogue national judicial decisions; rather, it evaluates legal design and institutional capacity, informed where appropriate by expert knowledge of relevant jurisprudence.

# Findings

## A. Overall Systemic Pattern

The Compliance Index shows that while rights have widely and significantly advanced, no Member State has achieved full functional alignment with the Directive's best-practice benchmark.

Even the highest-ranked jurisdictions retain structural weaknesses that affect legal cognisability, deterrence, or access to remedies.

Scores range from **10/20 (Germany)** to **18/20 (Cyprus, Romania)**,<sup>9</sup> with an overall average of **14.2/20 (71%)**. A slight majority of Member States (55.6%) cluster between **13 and 16.5**, reflecting partial convergence around the Directive's minimum requirements rather than the emergence of fully coherent and uniformly robust whistleblower protection systems. Within the middle tier (13.5–15.5), six countries are grouped together, and one-third (33%) sit at the lowest score within that band (13.5), indicating that partial compliance often remains structurally shallow rather than approaching full alignment. Score dispersion is also relatively modest; the standard deviation is approximately 2.3 points on a 20-point scale, reinforcing the conclusion that Member States have converged around a mid-range level of compliance rather than diverging widely in implementation strength.

The strongest indicators and sub-indicators cluster in the low- to high-**80s** on net compliance (with standard indicators reaching the mid-90s), while the weakest findings fall as low as **14.8%**, with the sharpest deficits concentrated in disclosure architecture, remedies, and enforceability.

These deviations fall into two distinct patterns: (1) widespread structural weaknesses affecting multiple Member States, and (2) rarer but potentially severe loopholes present in only a small number of jurisdictions that could defeat the Directive's objectives if left unaddressed.

Several of the most significant weaknesses concern procedural rules governing retaliation claims. The data reveals patterns of widespread noncompliance with the Directive's requirements for burdens of proof (14 countries scored 0), which determine how much evidence a

<sup>9</sup> Germany's score reflects particular weaknesses in burden-of-proof design and remedial architecture rather than absence of reporting channels.

whistleblower must produce to prevail. Even where reverse burdens of proof are formally adopted, some national formulations allow employers to prevail by demonstrating broadly framed ‘justified reasons’ for adverse measures, a formulation weaker than the Directive’s requirement that the employer prove that termination or other actions are ‘not linked in any way’ to whistleblowing. Such standards risk encouraging employers to initiate post-disclosure investigations designed to identify or construct retroactive justifications for adverse actions against the reporting person (a form of pretextual retaliation).

In addition, several countries maintain parallel or fragmented regimes governing EU-law disclosures and domestic whistleblowing, creating legal uncertainty that may chill reporting. Taken together, the remaining weaknesses concern coverage and reporting context (including duty-speech loopholes and restrictions on freedom of choice between internal and external reporting), institutional design coherence, procedural clarity, and the practical enforceability of whistleblower rights.

A recurring implementation defect is that rights often formally exist but are not easily visible or accessible to reporting persons. In several jurisdictions, key protections, particularly interim relief and legal cost coverage, are technically available only through cross-references to general procedural or labour law codes rather than being clearly integrated into whistleblower statutes. Where protections are scattered across multiple legal instruments, potential reporting persons may struggle to identify their rights or the procedures available to enforce them. The absence of self-contained, plain-language guidance within some transposition laws therefore reduces functional accessibility, especially for individuals without legal representation. Formal transposition may therefore coexist with practical uncertainty.

A related structural vulnerability concerns the timing of when whistleblower protection starts and how long it remains in force. The Directive does not explicitly regulate the precise moment at which protection begins. However, its structure indicates that protection should extend to conduct undertaken in connection with a disclosure, and nothing in the Directive suggests that protection should begin only after the formal submission of a report (Articles 19 and 21; Recitals 32 and 34).

Unfortunately, in some jurisdictions, protection attaches only upon the formal submission of a report, leaving preparatory conduct defenceless for evidence gathering, consultation, verification, or seeking confidential advice

prior to disclosure. Responsible reporting frequently requires preliminary investigation and consultation.

Other timing loopholes are scattered in some national frameworks. These include protection that expires after a short period of time, protection that terminates automatically when an investigation closes, and excessively short statutes of limitation for retaliation claims.

Such limitations risk undermining the Directive's requirement that Member States provide remedies that are effective, proportionate, and dissuasive, as retaliation may occur after investigations conclude or long after a disclosure has been made. Temporal restrictions that prevent claims from being brought or sustained may therefore neutralize deterrence and deny meaningful remedies through procedural technicalities.

Moreover, the Directive requires Member States to prohibit any form of retaliation, which necessarily includes delayed reprisals, such as post-investigation demotions, professional blocklisting, exclusion from opportunities, or contract termination after the case has faded from public attention.

Although these vulnerabilities are not widespread, such temporal limitations risk undermining the Directive's objectives and may conflict with the EU law principle of effectiveness (*effet utile*), which requires that national rules must not render the exercise of EU rights impossible or excessively difficult in practice.

A consistent cross-cutting pattern emerging from the data is a divergence between the 'front end' and 'back end' of whistleblower protection systems. Member States generally perform better on standards governing eligibility for protection, scope of protected disclosures, anti-retaliation rules, and reporting infrastructure than on standards governing remedies, interim relief, burdens of proof, restoration of status, legal cost coverage, and sanction effectiveness.

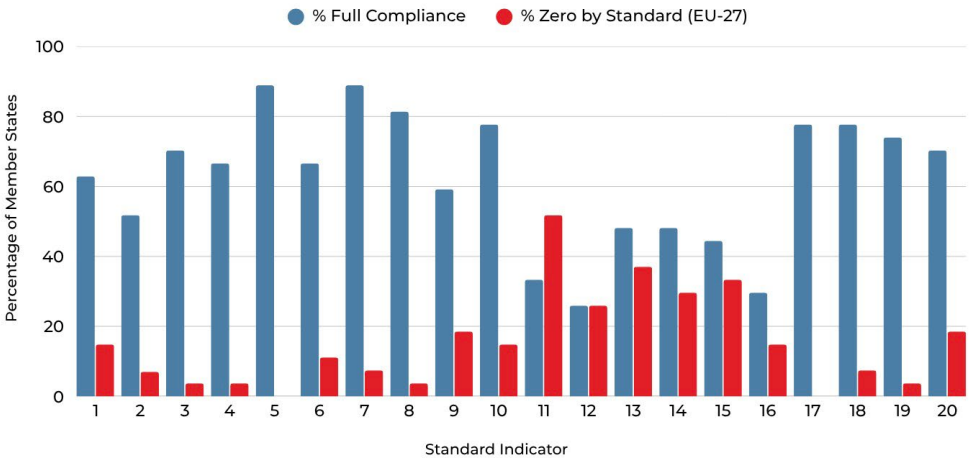
**Finally, the data reveals no consistent geographic, political, or accession-cohort pattern in compliance outcomes.**

High- and low-performing jurisdictions are distributed across regions and legal traditions, indicating that performance differences are driven primarily by national legislative and procedural design choices rather than structural regional characteristics.

Importantly, many Member States are within one or two targeted reforms of entering a high-compliance tier.

Improvements in evidentiary standards, interim protection, restoration mechanisms, conflict-of-interest safeguards, or sanction design could significantly elevate performance without exceeding the EU competence framework.

**Figure 1. Percentage of Member States' Full Compliance vs. Zero Compliance by Standard**



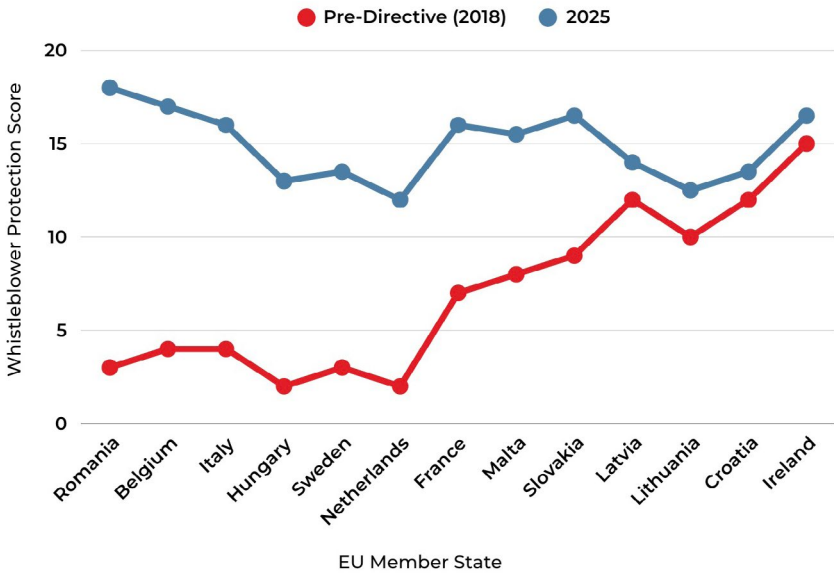
## B. Best Practices and Floor-Raising Effect

The Directive has had a demonstrable floor-raising effect across the European Union. The post-transposition score range of **10–18/20** reflects a structural upgrading of whistleblower protection compared to the pre-Directive landscape assessed in the International Bar Association–Government Accountability Project joint global study published in March 2021 on whistleblower laws and litigation as of 2018.<sup>10</sup>

In 2018, compliance with the same 20 best-practice standards ranged from **2 to 16**, and **six** Member States scored below **5/20**. Comprehensive horizontal whistleblower protection laws existed in only **13 of 27** EU Member States, while the remaining jurisdictions relied on fragmented or sector-specific regimes that did not provide full-system protection.

<sup>10</sup> (Devine, et al., 2021)

**Figure 3. Whistleblower Protection Scores: Pre-Directive (2018) vs. 2025**



This upward convergence is not merely symbolic. Several Member States recorded substantial improvements relative to their pre-Directive position, with score increases ranging from incremental adjustments to double-digit gains. The Directive has clearly established a Union-wide baseline architecture for whistleblower protection.

Importantly, the Directive has not imposed a rigid ceiling. Several Member States have adopted provisions that go beyond the Directive's minimum requirements in ways that are legally feasible within national competence and can strengthen functional protection. These 'beyond-Directive' measures are significant because they illustrate credible legislative options for strengthening protection without undermining the Directive's architecture, challenging the ceiling effect.

Examples include:

### **A Low Ceiling of Whistleblower Protection Standards**

While the Directive raised the floor, the data shows that the ceiling still remains relatively low. Few Member States exceed 17/20, and no jurisdiction achieves full alignment with all best-practice standards.

### Expanded protected subject matter/public-interest categories:

- **France** extends protected categories to include international law and public-interest disclosures.
- **Netherlands** explicitly includes public interest within protected categories.
- **Latvia and Romania** include protections relating to animal health/welfare (and Latvia also includes occupational safety), demonstrating that broader scopes can be legislated cleanly in national law.

### Stronger protection for civil society support structures and legal counsel:

- **France, Germany, and Greece** extend protections to civil society organizations acting as facilitators.
- **Greece** also protects the whistleblower's lawyer, reinforcing access to assistance and reducing isolation risk.

### Greater remedies and practical support:

- **France** allows courts to order attorney fees and living expenses and extends certain liability shields more broadly than the Directive baseline.
- **Slovenia** includes remedies linked to unemployment benefits, illustrating how Member States can integrate whistleblower remedies into social protection systems.

### Strengthened institutional duties and staff protection:

- **Cyprus** includes an affirmative employer duty to intervene against retaliation and establish a code of conduct, moving beyond passive anti-reprisal language.
- **Slovakia** extends protection to 'Responsible Persons' staffing reporting channels, addressing a known vulnerability where those administering channels may themselves face retaliation.
- **Poland** extends anti-retaliation protection explicitly to constitutional freedoms and human rights, and includes soldiers, showing that strong protections can be legislated for sensitive sectors within national competence.

Collectively, these examples show that stronger rights remain legally and

institutionally feasible within the Directive's framework. They illustrate reform pathways in subject-matter expansion, facilitator protection, income preservation, institutional duties, and staff safeguards. The uneven adoption of such measures across the Union reflects policy choices rather than structural legal barriers.

## **Overall, the Directive has successfully established a common structural baseline across the Union.**

The remaining challenge is not the presence of whistleblower rights, but ensuring that the laws enforcing them operate as coherent, credible protection regimes capable of delivering effective remedies, restoring status, and preserving economic security when retaliation occurs.

### **C. Strongest Areas of Compliance**

Across the Union, compliance is strongest in domains governing eligibility, personal scope, anti-retaliation protections, and establishing confidential whistleblower reporting channels.

These indicators consistently show high full-compliance rates and very low zero rates. The strongest domains share common features:

- Clear eligibility standards (reasonable belief)
- Rejection of motive-based disqualification
- Broad personal scope of protection, including anti-SLAPP
- Broad subject matter for protected speech
- Comprehensive anti-retaliation coverage, including litigation
- Strong confidentiality safeguards
- Protection of public disclosures under Directive criteria
- Overriding gag orders or other restraints on protected speech
- Outreach and enfranchisement of whistleblowers

### **Key High-Performing Standards**

The figures below show the distribution of substantial, partial, and non-compliance across Member States for the strongest indicators.

### **Standard 5–Protection for employees and non-employees (personal scope)**

- 24 substantial compliance, 3 partial, 0 zero

### **Standard 7–Full scope of harassment/retaliation**

- 24 substantial, 1 partial, 2 zero

### **Standard 8–Ban on gag orders / waivers**

- 22 full, 4 partial, 1 zero

### **Standard 10–Merits test (overall eligibility)**

- 21 substantial, 2 partial, 4 zero

Sub-indicators:

- 10A–Reasonable Belief: 20 substantial, 4 partial, 3 zero
- 10B–No Motive-Based Disqualification: 21 full, 5 partial, 1 zero

### **Standard 17–Whistleblower enfranchisement (acknowledgment, follow-up, feedback)**

- 21 substantial, 6 partial, 0 zero

### **Standard 4–Spillover retaliation protection**

- 18 substantial, 8 partial, 1 zero

### **Standard 15A–Liability of natural persons**

- 22 substantial, 1 partial, 4 zero

Table 1 presents the indicators and sub-indicators with the highest net compliance scores across Member States. While the narrative above highlights the principal thematic strengths of national frameworks, the chart ranks the strongest individual indicators and sub-indicators based on their net compliance scores.

Member States perform best in defining coverage, prohibiting retaliation in broad terms, rejecting motive tests, protecting public disclosures, and safeguarding confidentiality.

**Table 1. Highest Net Compliance Findings Across Indicators and Sub-Indicators<sup>11</sup>**

Rank	Standard	Indicator/ Sub-Indicator Title	Net Compliance
1	5	Personal scope	94.4%
2	7	Full retaliation protection	90.7%
3	10B	No motive-based disqualification	87.0%
4	8	Ban on gag orders	88.9%
5	17	Whistleblower enfranchisement	88.9%
6	2B	Protection of public disclosures	87.0%
7	18	Education and outreach	85.2%
8	16B	Confidentiality safeguards	85.2%
9	3	Wide subject matter scope	83.3%
10	4	Spillover retaliation protection	81.5%

#### **D. Weakest Areas of Compliance**

Compliance is weakest in domains that determine whether whistleblower protection can function effectively once retaliation occurs.

These indicators display the highest zero rates across the framework and relate to the enforceability of rights in practice, including disclosure architecture, evidentiary standards, restoration mechanisms, interim protection, access to justice, and sanction effectiveness.

<sup>11</sup> Rankings reflect net compliance scores across both best-practice indicators and sub-indicators using the study's weighted scoring method (1 = substantial compliance, 0.5 = partial compliance, 0 = non-compliance).

Together they illustrate the principal structural weakness identified in this study: while reporting systems and eligibility rules are widely established, the mechanisms required to vindicate whistleblower rights in retaliation proceedings remain uneven across Member States. The analysis begins with disclosure architecture, where restrictions on how and when whistleblowers may report can undermine protection before they can even make retaliation claims.

## I. Disclosure Architecture and Channel Dependence (Standard 2)

### Standard 2—Broad disclosure rights ('no loopholes')

- 2 substantial, 11 partial, 14 zero (51.9% zero)

#### 2C—Duty speech protection

- 2 substantial, 4 partial, 21 zero (77.8% zero—the weakest sub-indicator in the framework)

#### 2A—Freedom to choose internal vs external reporting

- 18 substantial, 1 partial, 8 zero

#### 2B—Public disclosures

- 22 substantial, 3 partial, 2 zero

Although public disclosures under the Directive are comparatively strong, the most pronounced deficiency undermining Standard 2 overall concerns freedom/context loopholes and protection for disclosures made in the course of professional duties. In most Member States, protection is effectively conditioned on the use of prescribed channels. This narrows expressive coverage and increases reliance on institutional mechanisms that may present conflicts of interest.

In 5.5 jurisdictions, protection is triggered only upon formal submission of a report, leaving preparatory conduct including consultation, verification, and evidence gathering, outside clearly protected activity.<sup>12</sup> This creates a temporal vulnerability for both reporting persons and facilitators.

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<sup>12</sup> While Belgium's public sector law has this restriction, its private sector law does not, therefore it received a partial compliance score/0.5. In the Czech Republic, caselaw, rather than statutory language, defined this restriction. See *Podrazilová v. State Institute for Drug Control (SÚKL)*. Nejvyšší správní soud (Supreme Administrative Court). Docket No. 8 Ad 14/2024-54. Decided Oct. 22, 2025. Directive (EU) 2019/1937, Article 6(1); Czech Whistleblower Protection Act §§ 4, 7. Accessed March 3, 2026. <https://www.whistleblowingcenter.cz/knihovna/zruseni-sluzebniho-pomeru-reditelky-statniho> and <https://www.whistleblowingcenter.cz/knihovna/zruseni-sluzebniho-pomeru-reditelky-statniho-ustavu-pro-kontrolu-leciv---rozhodnuti-nejvyssiho-spravniho-soudu>

## II. Institutional Channel Safeguards (Standard 16)

### Standard 16–Institutional channels

- 8 substantial, 15 partial, 4 zero

#### Sub-indicators:

16B–Confidentiality safeguards: 19 substantial, 8 partial, 0 zero

16A–Institutional independence: 9 substantial, 8 partial, 10 zero

16C–Training/competence: 14 substantial, 1 partial, 12 zero

Although institutional reporting channels now formally exist across the Union, and sub-indicator analysis on external institution confidentiality safeguards reflects **85.2%** net compliance, operational safeguards nevertheless remain uneven with standard indicator institutional channel analysis results reflecting only **57.4%** net compliance. Sub-indicators measuring institutional independence (16A) and training and competence requirements (16C) show substantially lower levels of full compliance than other elements of reporting architecture.

Only 9 Member States clearly ensure independence safeguards for channel administrators, and 14 require specific training or competence standards.

This variation is significant because several Member States condition protection on the use of prescribed reporting channels. Where independence safeguards or conflict of interest rules are weak, whistleblowers may be required to report through mechanisms that expose them to the very actors responsible for the misconduct.

In such circumstances, channel dependence can transform reporting systems from protective mechanisms into potential exposure points. In some jurisdictions, the problem is even more fundamental: the statutory framework does not clearly identify the appropriate fora or procedural pathways through which whistleblowers may assert their rights.

**This lack of procedural clarity undermines legal certainty and may discourage individuals from pursuing retaliation claims even where formal protections exist.**

### III. Evidentiary Standards and Burden of Proof (Standard 11)

9 substantial, 4 partial, 14 zero (51.9% zero)

**Over half of Member States fail to implement a reverse burden of proof in a manner that materially reduces the whistleblower's evidentiary burden.**

In several jurisdictions, employers may prevail by demonstrating broadly framed 'justified reasons' for adverse measures. Such formulations fall short of the Directive's requirement that retaliatory action be proven not linked to whistleblowing.

These diluted standards significantly weaken practical enforceability and invite further retaliation.

### IV. Restoration and Make-Whole Compensation (Standard 12)

Overall:

- 7 substantial, 13 partial, 7 zero

#### **Sub-indicators:**

12A–Economic damages: 6 substantial, 12 partial, 9 zero

12B–Non-economic damages: 7 substantial, 8 partial, 12 zero

12C–Restoration of status: 7 substantial, 5 partial, 15 zero

Restoration of status represents one of the most significant weaknesses across Member States. In many jurisdictions, while some financial compensation may be available, reinstatement or cancellation of retaliatory measures is not clearly guaranteed.

Partial compliance frequently reflects incomplete remedial design: economic losses may be recognised, yet non-pecuniary harm, including reputational damage and professional marginalisation, is not expressly covered, or restoration mechanisms are absent.

This produces compensation frameworks that may mitigate financial harm without fully repairing professional damage. In several systems, remedies are located in general labour or civil codes rather than clearly integrated into whistleblower legislation, reducing predictability and accessibility for potential claimants.

## V. Interim Relief (Standard 13)

Overall:

- 13 substantial, 4 partial, 10 zero

The absence of interim relief significantly limits practical protection. Without temporary reinstatement, salary continuation, or comparable safeguards pending proceedings, whistleblowers may not be able to survive financially during prolonged proceedings.

Further, without interim relief employers can drag out proceedings as long as possible rather than resolve cases through settlement negotiations.

## VI. Legal Fees and Costs (Standard 14)

Overall:

- 13 substantial, 5 partial, 9 zero (33.3% zero)

Cost exposure remains a structural barrier in a substantial minority of jurisdictions. Even where fee-shifting exists under general procedural law, the absence of explicit integration within whistleblower statutes reduces clarity and practical accessibility.

## VII. Deterrence and Accountability (Standard 15)

### Sub-indicators:

15A—Liability of natural persons: 22 substantial, 1 partial, 4 zero

15B—Effective and dissuasive sanctions: 8 substantial, 8 partial, 11 zero (40.7% zero)

While personal liability is widely recognised in formal generalised terms, sanction frameworks often lack demonstrable deterrent strength.

In several systems, maximum penalties are modest, enforcement is infrequent, or limitation periods undermine practical accountability.

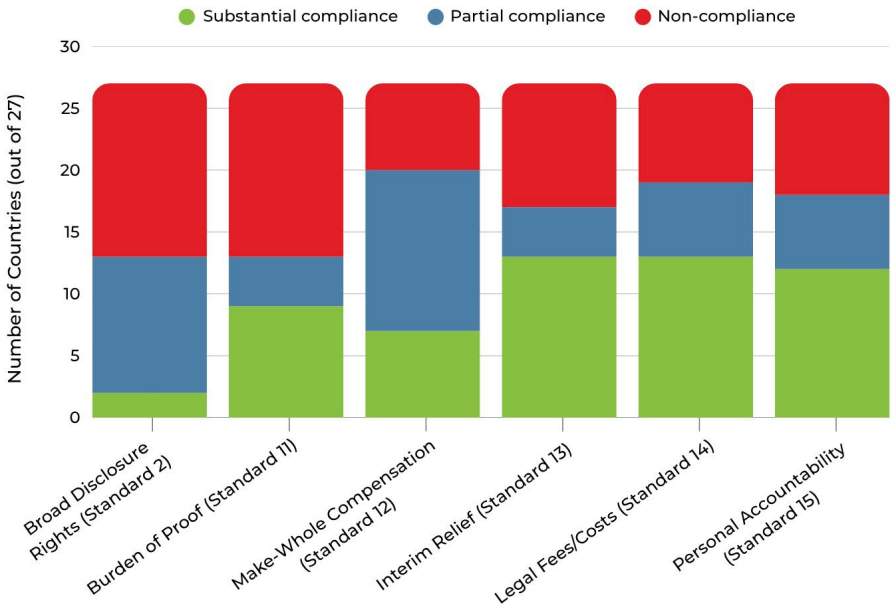
### Divergence Between Standards 15A and 15B

The divergence between strong recognition of individual liability (15A) and weaker performance on sanction effectiveness (15B) indicates that formal attribution of responsibility does not necessarily translate into meaningful deterrence.

**Table 2. Lowest Net Compliance Findings Across Indicators and Sub-Indicators**

Rank	Standard	Indicator/ Sub-Indicator Title	Net Compliance
1	2C	Duty speech protection	14.8%
2	2	Broad disclosure rights	27.8%
3	12C	Restoration of status/contract/license	35.2%
4	12B	Non-economic damages	40.7%
5	11	Burden of proof	40.7%
6	12A	Economic damages/back pay	44.4%
7	15B	Effective sanctions	44.4%
8	12	Make-whole compensation	50.0%
9	13	Interim relief	55.6%
10	16	Institutional whistleblowing channels	57.4%

**Figure 4. Distribution of Compliance Across Key Weak Indicators<sup>13</sup>**



### Pattern Among Weakest Indicators

Across these domains, the weakest indicators concern:

- Expressive protection in duty-based contexts
- Denying freedom of choice between internal and external channels for initial report
- Restoration of professional status
- Robust reverse burden implementation
- Interim relief
- Effective and dissuasive sanction design

These elements determine whether whistleblower protection operates as a durable safeguard or as a formally recognised but practically constrained entitlement.

<sup>13</sup> Green indicates substantial compliance, blue indicates partial compliance, and red indicates non-compliance across 27 Member States. The chart highlights systemic gaps in remedies and enforcement mechanisms, particularly disclosure rights and burdens of proof.

# PART II: 20 BEST PRACTICE STANDARDS AND RESULTS

## **1. *Comprehensive horizontal whistleblower rights that harmonise national law with the EU Directive.***

Basic fairness dictates that whistleblowers should be treated and protected equally regardless of the subject matter of their disclosure. As a matter of EU law, however, the Whistleblowing Directive cannot be comprehensive, because of limitations on EU legislative competence vis-à-vis the Member States.<sup>14</sup>

In particular, Member States retain exclusive or primary competence over national security, (Article 3(2) TEU) criminal law enforcement, public order, intelligence services, and the organisation of national constitutional, judicial, and administrations systems. The Directive therefore does not cover breaches of national law outside the policy fields expressly harmonised by the Directive.

Concurrently, most Member States have, over the years, adopted piecemeal whistleblower protections across nationally regulated fields in response to domestic needs and international obligations. These protection regimes generally fall short of providing procedures and protections equivalent to those required by the EU Directive.

As a result, following national transposition, parallel whistleblower protection systems may continue to operate that are incompatible, duplicative, or contradictory. Such fragmentation can result in unequal levels of protection for whistleblowers and may raise concerns under constitutional principles and international human rights guarantees of equality before the law.

These multiple 'vertical' rules can have a disastrous effect, creating a dysfunctional administrative process and thwarting the Directive's purpose to encourage reports. Both employers and employees would have to learn different rules depending on subject matter that may only be decided after independent legal decisions. Unharmonised systems mean legislating multiple laws and doubling administrative burden by requiring separate channels, procedures, training, and record systems.

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<sup>14</sup> Treaty on the Functioning of the European Union, Article 2; European Commission, "Areas of EU Action," accessed March 3, 2026. [https://commission.europa.eu/about/role/law/areas-eu-action\\_en](https://commission.europa.eu/about/role/law/areas-eu-action_en)

Most significantly, multiple systems inherently create undue uncertainty for whistleblowers as to whether they have rights for any given report. Such uncertainty creates a severe *chilling effect*.

**Net compliance: 20/27**

**Substantial compliance: (17)**

Bulgaria, Cyprus, Czechia, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden

**Partial compliance: (6)** Belgium, Croatia, Denmark, Latvia, Portugal, Spain

**Non-compliance: (4)** Austria, Estonia, Greece, Hungary

## **2. Broad whistleblowing disclosure rights with ‘no loopholes’.**

Protected expression should include any lawful communication of information protected by the law, without loopholes for formality, context, or audience, outside of specific legislative or national security restrictions. The Directive does not include any such loopholes (Article 5(3)-(5)).

A first principle is that the freedom to blow the whistle publicly should be protected, if necessary, as the only way to prevent or address serious misconduct. The Directive protects immediate public disclosure when the whistleblower has reasonable grounds to believe that disclosures internally or externally to authorities would result in retaliation, has little prospect of success due to collusion or destruction of evidence, or when there is an imminent threat to the public interest such as an emergency or irreversible damage (Article 15(1)(b)).

Otherwise, it is necessary to make reports either through internal (Articles 7-9) or external competent authority (Articles 10-12) channels, whichever the whistleblower chooses (Article 10) for a minimum of three months before ‘going public’ (Article 15(1)(a)). Although public disclosure rights are qualified, the Recital clarifies that the Directive also protects public freedom of expression as interpreted by the European

## **Extending the Scope of Transposition Laws**

The Directive permits (Recital, paras. 24, 104), and the European Commission encourages Member States to extend the scope of transposition laws beyond its authority to create uniform rules for whistleblowing against breaches of both EU and national laws. Responsible, functional transposition of the Directive requires that Member States enact or modify provisions of existing national whistleblower protection rules, harmonised for consistency.

Court of Human Rights (paras. 31, 45). It emphasises the importance of whistleblowers as media sources, explaining that role 'is crucial for safeguarding the "watchdog" role of investigative journalism in democratic societies' (*Id.*, para. 46).

It also is essential to specify that disclosures in the course of job duties are protected, because the overwhelming volume of communications of protected information and subsequent retaliation is done through so-called 'duty speech' responsibilities to supervisors by those whose institutional role is blowing the whistle as part of organisational checks and balances, such as auditors, investigators, compliance officers or others routinely trying to address problems by communicating protected information to a supervisor.

The Directive creates detailed guidance for reports to institutional channels. However, there is no requirement to use them. The definition for a protected internal report, 'oral or written communication of information on breaches within a legal entity in the private or public sector', does not include any exceptions (Article 5(4)). The Recital makes clear that the Directive is intended to cover reports required as part of these professional responsibilities. This scenario can mean reporting information directly to the government as part of professional duties or because the breach is a criminal offense (Recital, para. 62).

The Commission also indirectly provides the reason why protection for 'duty speech' is essential for the Directive's objectives: *'For the effective detection and prevention of breaches of Union law, 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 it, where possible'* (*Id.*, para. 47).

**Net compliance:** 7.5/27

**Substantial compliance:** (2) Romania, Slovakia

**Partial compliance:** (11) Belgium, Croatia, Cyprus, Denmark, Estonia, Germany, Ireland, Luxembourg, Netherlands, Spain, Sweden

**Non-compliance:** (14) Austria, Bulgaria, Czech Republic, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovenia

### **3. Wide subject matter scope for scope of EU authority.**

Sectoral laws leave arbitrary restrictions on accountability and inherently create a chilling uncertainty for would-be whistleblowers on whether they

are protected. The Directive gives whistleblower rights to report actual or potential 'breaches' of EU laws, which covers the entire scope of activity under EU authority, from commerce to the environment to public health and safety (Article 2, Annex). The term 'breaches' is far broader than mere illegality, however. It also includes 'abusive practices', which means acts or omissions which do not appear to be unlawful in formal terms 'but defeat the object or the purpose' of the law (Article 5(1)[ii], Recital, para. 42).

The Directive does not protect violations of secrecy requirements for classified information, judicial proceedings, criminal procedure, or legal and medical professional privilege (Article 3(3)). Other professionals can make protected reports, 'provided that reporting that information is necessary for the purposes of revealing a breach falling within the scope of this Directive' (Recital, para. 27). However, it is important to note that all Member States of the EU are also signatories to the European Convention on Human Rights. The European Court of Human Rights has emphatically ruled that all employees and other persons have a right under Article 10 of the Convention to be protected for disclosing information of public interest, even national security information.<sup>15</sup>

**Net compliance:** 22.5/27

**Substantial compliance:** (19) Belgium, Bulgaria, Croatia, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Sweden

**Partial compliance:** (7) Czech Republic, Estonia, Greece, Lithuania, Poland, Slovenia, Spain

**Non-compliance:** (1) Austria

#### **4. Protection against spillover retaliation at the workplace.**

The law should cover all common work-related scenarios that could have a chilling effect. This is necessary to shield those who assist or associate with the whistleblower who acts as the final messenger for a disclosure. It 'takes a village' to blow the whistle responsibly and effectively. Representative scenarios include individuals who are perceived as associated with or 'assisting whistleblowers.'

Guilt by association is unacceptable because isolation is fatal both for job survival and impact making a difference. Those who assist whistleblowers

<sup>15</sup> Guja v. Moldova [GC], no. 14277/04, ECHR 2008; *Halet v. Luxembourg* [GC], no. 21884/18, ECHR 2023.

are essential for the necessary preliminary steps to have a 'reasonable belief' and qualify for protection as a responsible whistleblowing disclosure. Since corroboration and supporting evidence are essential, these indirect contexts often can have the most significant potential for a chilling effect that locks in secrecy by keeping people silent and isolating those who do speak out.

In addition to the whistleblower, the Directive protects facilitators who assist in the report (Article 4(4)(a)); and connected persons such as colleagues or relatives (4(4)(b)). As a result, worker representatives like unions are covered too (Recital, paras. 21, 41). Those providing legal assistance are protected from retaliation for defending the whistleblower as well (Recital, para. 89).

**Net compliance: 22/27**

**Substantial compliance: (18) Croatia, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden**

**Partial compliance: (8) Austria, Belgium, Bulgaria, Czech Republic, Ireland, Latvia, Lithuania, Poland**

**Non-compliance: (1) Estonia**

## **5. *Protection both for employees and non-employees who report work-related information.***

Whistleblower policies should protect all who carry out activities relevant to the organisation's mission, such as contractors who could create or shareholders who could incur liability. To shield against blocklisting, the law must cover applicants. Former employees need protection, because in addition to blocklisting, retaliation is possible through cancelation of medical and other insurance benefits or pensions.

In addition to all public or private employees, the Directive protects virtually anyone performing services for the institution (Recital, paras. 38-40) such as job applicants (Article 4(3)); former employees (Article 4(2)); part-time employees, trainees, and volunteers (Recital, para. 40).

Regardless of the formal employment status, coverage for employment-related reprisals should extend to all who could be affected by secondary retaliation. The Directive also protects legal entities such as those at contractors and suppliers who could lose licenses and contracts or face boycotts (Article 4(1)(d)); civil society organisations or other entities that act as facilitators for the reporting person (Article 4(4)(a), Recital para. 89)

shareholders (Article 4(1)(c)); self-employed (Article 4(1)(b)); customers or recipients of services and even the legal person (corporation, NGO, or other legal entity) where the whistleblower owns (Recital para. 41), works at, or is connected with (Article 4(4)(c)).

This provision creates an indirect corporations/NGOs whistleblower protection law beyond merely an employment right. When an employee blows the whistle, their institution is protected from associated retaliation. Any employee or organisational chief who reports protected information automatically incurs anti-retaliation protection for that leader's organisation.

**Net compliance: 25.5/27**

**Substantial compliance: (24) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden**

**Partial compliance: (3) Italy, Lithuania, Netherlands**

**Non-Compliance: None**

## **6. *Reliable identity protection.***

To maximise the flow of information necessary for accountability, reliable protected channels must be available for those who choose to protect their identities. Otherwise, there will be a severe chilling effect. The concept covers both anonymous disclosures, in which no one knows the identity of the whistleblower, and confidential communications, in which identity must be safeguarded by the institutional audience. Confidentiality must go beyond a promise not to reveal a name without consent, which should be written. Confidentiality should also extend to restrictions on disclosure of 'identifying information'. Often when only a few are aware of certain facts, that information is easily traceable back to the source.

Further, almost no whistleblower can be guaranteed absolute confidentiality because testimony or identification of the person may be mandatory for civil or criminal proceedings or essential investigative developments. When exposure is non-discretionary, a best practice confidentiality policy provides for timely advance notice to whistleblowers that their lawfully required exposure is imminent.

The Directive recital and text repeatedly emphasise the priority requirement for confidentiality in addressing reports (Articles 9(1)(a), 11(2)(b), 16; Recital paras. 53-4, 76, 84-5). The protection extends to identifying information (Article 16(1)). Confidentiality cannot be breached unless obliged by national or Union law (Article 16(2); Recital para. 82). In that event, as a rule the whistleblower is entitled to advance notice and explanation (Article 16(3)). In the event of a conflict, the Directive's confidentiality rights prevail over European Union data protection laws (Recital, paras. 84-5). Each nation must provide penalties for confidentiality breaches (Article 23(1)(d)). While Member States have discretion whether to act on anonymous reports, anti-reprisal protections apply to any whistleblower subsequently identified (Article 6(3)).

**Net compliance:** 21/27

**Substantial compliance:** (18) Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia

**Partial compliance:** (6) Belgium, Finland, Latvia, Lithuania, Slovakia, Spain

**Non-compliance:** (3) Denmark, Germany, Sweden

## **7. *Protection against full scope of harassment.***

The forms of harassment a whistleblower can suffer are limited only by the imagination. As a result, it is necessary to comprehensively ban any prejudicial discrimination taken because of whistleblowing, whether active (e.g., termination) or passive (e.g., a refusal to promote or a failure to provide training). Recommended, threatened, and attempted actions can have the same chilling effect as actual retaliation. The prohibition must cover recommendations, as well as the official act of discrimination, to guard against managers who 'don't want to know' why subordinates have targeted employees. In non-employment contexts, laws should protect whistleblowers against a wide range of harassment, including violence and threats to property; provide immunity from civil liability, such as defamation claims or breach of contract lawsuits; and safeguard against the most chilling form of retaliation: criminal prosecution.

The Directive's text definition of retaliation is all-encompassing, to include acts or omissions prompted by a protected report 'which causes or may cause unjustified detriment to the reporting person' (Article 5(11)). It prohibits 'any' form of retaliation, 'including threats of retaliation and

attempts of retaliation'. It illustrates the ban by highlighting fifteen common active and passive common reprisals, from employment-based harassment to psychiatric and medial referrals, or cancelation of contracts and licenses (Article 19).

The Directive provides an affirmative defence against civil and criminal liability for gathering evidence unless accompanied by an independent crime and immunity from criminal or civil liability for disclosure if the whistleblower reasonably believes disclosure is necessary to reveal misconduct (Articles 21(2), (3) and (7)); Recital, paras. 92, 97).

The Directive's shield overrides liability under European Union trade secrets laws (Recital, para. 98).

**Net compliance: 24.5/27**

**Substantial compliance: (24)** Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Spain

**Partial compliance: (1)** Netherlands

**Non-compliance: (2)** Portugal, Sweden

## **8. Shielding whistleblower rights from gag orders.**

Any whistleblower law or policy must include a ban on 'gag orders' resulting from any rules, policies or nondisclosure agreements that would otherwise override rights in the whistleblower law and impose prior restraint on speech. This principle also covers supremacy of the whistleblower statutes over conflicting laws.

The Directive is consistent. Article 21(2) establishes that its rights supersede any restrictions on speech. Article 24 is clear that Directive rights cannot be waived or limited, such as for an employment prerequisite.

**Net compliance: 24/27**

**Substantial compliance: (22)** Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

**Partial compliance:** (4) Czech Republic, Greece, Lithuania, Netherlands

**Non-compliance:** (1) Luxembourg

## Forum

- The setting to adjudicate a whistleblower's rights must be free from institutionalised conflicts of interest and operate under due process rules that provide a fair day in court.

## 9. *Right to a genuine day in court.*

This criterion requires administrative remedies and judicial due process rights, the same as those available for citizens who are aggrieved by the illegality or abuse of power evidenced in the whistleblower's disclosure.

The elements include low-cost administrative remedies for those who cannot afford judicial due process, timely decisions, the right to a day in court with witnesses and to confront accusers, objective and balanced rules of procedure, and reasonable deadlines.

In Articles 21(5) and 22(1), the Directive requires a fair due process trial that can occur in court. Further, the Recital consistently presumes judicial interpretations and decisions of the Directive's provisions (Recital, paras. 38, 42, 90).

Further, there is appellate judicial review for all enforcement decisions by competent administrative authorities, including action on whistleblowing reports (Recital, para. 103).

**Net compliance:** 19/27

**Substantial compliance:** (16) Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Ireland, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Sweden

**Partial compliance:** (6) Denmark, Estonia, Greece, Italy, Luxembourg, Spain

**Non-compliance:** (5) Austria, Germany, Hungary, Netherlands, Poland

## Burdens of Proof

- The legal standards for entitlement to protection and the amount of evidence required to prove retaliation are the basic tests a whistleblower must pass for the law to provide relief against retaliation.

## **10. ‘Merits test’ to qualify for protection.**

The Directive removed the ‘good faith’ requirement for protection that was in early versions because it permits putting the whistleblower’s motives on trial. The Directive’s recital also is clear that motives should not be a relevant factor as a prerequisite for protection (Recital, para. 32), although inherently they are relevant to assess credibility.

Instead, the Directive relies on the ‘reasonable belief’ test. The gatekeeper word is ‘reasonable’ for the Directive’s free speech rights and protections. The Directive protects those who have a ‘reasonable suspicion’ or ‘reasonable grounds to believe’ that information is true and relevant, even if a mistaken suspicion without evidence, of a past, ongoing, or potential future breach (Article 5(2); Recital paras. 32, 43).

Whistleblowers can make public reports immediately if they have ‘reasonable grounds to believe’ it is necessary due to an emergency, fear of retaliation, or a bad faith response by internal and external channels (Article 15(b)).

Whistleblowers ‘shall not incur liability of any kind’ if they ‘ha[ve] reasonable grounds to believe that the reporting or public disclosure of such information was necessary for revealing a breach pursuant to this Directive’ (Article 21(7)). In short, the Directive only protects ‘reasonable’ actions.

The Recital clarifies this basic boundary for protection: ‘[R]eporting persons should have reasonable grounds to believe, in light of the circumstances and the information available to them at the time of reporting, that the matters reported by them are true’ (Recital, para. 32).

**Net compliance: 22/27**

**Substantial compliance: (21)** Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden

**Partial compliance: (2)** Austria, Luxembourg

**Non-compliance: (4)** Croatia, France, Germany, Portugal

## **11. Realistic standards to prove violations of rights.**

Once it is established that a reporting person is entitled to protection,

burdens of proof govern how much evidence is needed to prove a violation. This makes the issue of unsurpassed significance for whether the whistleblower has a fair chance for justice. If the requirement for evidence is too high, the rules are effectively rigged. The definitions and boundaries for rights and even a fair day in court will not matter if the bar is too high. The rules effectively would be rigged.

That is not the case for the Directive, which is a global pacesetter for this criterion. Consistent with global standards, the Directive has a dual or 'reverse burden of proof'. If the whistleblower establishes that 'he or she reported or made a public disclosure and suffered a detriment, it shall be presumed that the detriment was made in retaliation for the report or the public disclosure', and the burden then shifts to the employer to prove that the action was based on duly justified grounds (Article 21(5)).

The Recital provides the specific burden for the employer's responsibility, 'to demonstrate that the action was not linked in any way to the reporting or the public disclosure' (Recital, para. 93).

**Net compliance: 11/27**

**Substantial compliance: (9) Belgium, Bulgaria, Cyprus, Greece, Hungary, Latvia, Lithuania, Slovenia, Spain**

**Partial compliance: (4) Czech Republic, Denmark, Italy, Poland**

**Non-compliance: (14) Austria, Croatia, Estonia, Finland, France, Germany, Ireland, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Sweden**

### **Relief for Whistleblowers Who Win**

- The twin bottom lines for a remedial statute's effectiveness are whether it achieves justice by: (1) helping the victim to obtain adequate redress; and (2) holding the wrongdoer accountable.

### **12. 'Make whole' compensation.**

If whistleblowers prevail, relief must be sufficiently comprehensive to cover all the direct, indirect, and future consequences of the reprisal. They should be "made whole." Otherwise, the whistleblower may "lose by winning."

Make whole relief may include the payment of damages for medical bills, indirect financial consequences, and intangibles, such as pain and suffering, therapy for emotional distress or loss of reputation. In non-employment

contexts, it could require relocation, restoration of a contract or license, or withdrawal of litigation.

The Directive does not specify minimum specific requirements but does mandate that 'remedies and full compensation are provided for damage' caused by retaliation (Article 21(8)). While not mandatory, the Directive makes it an available option for Member States to provide 'financial assistance and support measures, including psychological support, for reporting persons in the framework of legal proceedings' (Article 20(2)).

Despite approving a full range of financial and personal relief for the direct and indirect effects of retaliation, the Directive does not require Member States to modify pre-existing national laws on remedies (Article 21(8); Recital, para. 94).

**Net compliance: 13.5/27**

**Substantial compliance: (7) Bulgaria, Cyprus, France, Hungary, Italy, Lithuania, Romania**

**Partial compliance: (13) Austria, Croatia, Czech Republic, Denmark, Greece, Ireland, Latvia, Malta, Poland, Slovakia, Slovenia, Spain, Sweden**

**Non-compliance: (7) Belgium, Estonia, Finland, Germany, Luxembourg, Netherlands, Portugal**

### **13. Interim relief.**

Anti-reprisal mechanisms that appear streamlined on paper commonly drag out for years in practice.

Ultimate victory may be no more than vindication for unemployed, blocklisted whistleblowers who go bankrupt while they are waiting to win. Injunctive or interim relief must therefore be available following a preliminary determination. Timely provision of interim relief also reduces unnecessary protracted litigation.

Without it, employers have little to lose by dragging out lawsuits and appeals indefinitely. Until a contrary final decision, harassment or delays by employers can succeed both in depriving the whistleblower of income and in sustaining a chilling effect in the workplace.

If the whistleblower is reinstated while the substantive case proceeds, the employer's best interest is more likely to 'stop the bleeding' by resolving the dispute on fair terms. Few other criteria have more impact

on whether a whistleblower law makes a difference in reality than the effectiveness of interim relief. In accordance with national law, the Directive requires Member States to provide 'interim relief pending the resolution of legal proceedings' (Article 21(6)).

The Recital reinforces the explanation why:

*Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted... [Dismissal] might be difficult to reverse after the lapse of lengthy periods and...can ruin the individual financially, a perspective which can seriously discourage potential whistleblowers. (para. 96)*

**Net compliance: 15/27**

**Substantial compliance: (13)** Belgium, Bulgaria, Croatia, Cyprus, Greece, Ireland, Italy, Latvia, Malta, Romania, Slovakia, Slovenia, Sweden

**Partial compliance: (4)** Czech Republic, France, Lithuania, Spain

**Non-compliance: (10)** Austria, Denmark, Estonia, Finland, Germany, Hungary, Luxembourg, Netherlands, Poland, Portugal

#### **14. Coverage for legal fees and costs.**

A prerequisite for viable rights is legal aid to pursue claims, or reimbursement of attorney fees and litigation costs for whistleblowers who substantially prevail.

Otherwise, they could not afford to assert their rights. In accordance with national law, remedies should include legal fees (Recital, para. 94). The Directive also requires that Member States provide 'legal aid in further proceedings and legal counselling or other legal assistance' (Article 20(1)(c); Recital, para. 99).

**Net compliance: 16/27**

**Substantial compliance: (13)** Austria, Belgium, Bulgaria, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, Spain

**Partial compliance: (6)** Croatia, Cyprus, Czech Republic, Estonia, France, Netherlands

**Non-compliance: (8)** Denmark, Finland, Germany, Ireland, Italy, Luxembourg, Portugal, Sweden

## **15. Personal accountability for reprisals.**

To prevent repeated violations, individuals responsible for retaliating against whistleblowers should be held directly accountable. Without personal accountability, managers may perceive minor risk in engaging in harassment or obstruction.

If the only consequence is that the retaliation is overturned, there is little deterrent effect, and some retaliators are even rewarded for their behaviour. Personal liability for those responsible is therefore one of the most effective tools to prevent retaliation.

The Directive requires Member States to establish sanctions for a broad range of misconduct, including hindering reports or disclosures, retaliation, vexatious litigation, and confidentiality breaches. Those penalties must be 'effective, proportionate and dissuasive' (Article 23(1)). The sanctions must apply to both legal and natural persons. The Recital further supports personal liability as an important deterrent (para. 88).

The availability of direct financial sanctions against individuals strengthens accountability and can have a dissuasive effect. However, the real impact of such sanctions depends on consistent enforcement and whether the maximum penalties are meaningful in relation to the seriousness of the retaliation and the economic position of the culpable decision-makers.

**Net compliance: 15/27**

**Substantial compliance: (12)** Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Ireland, Luxembourg, Portugal, Spain

**Partial compliance: (6)** Bulgaria, Italy, Malta, Poland, Romania, Slovakia

**Non-compliance: (9)** Croatia, Denmark, Finland, Hungary, Latvia, Lithuania, Netherlands, Slovenia, Sweden

### **Making a Difference**

- Whistleblowers will risk retaliation if they think that speaking up will make a difference. Numerous studies have confirmed this motivation. This is also the bottom line for affected institutions or the public: positive results. Otherwise, the point of a reprisal dispute is limited to whether injustice occurred on a personal level. Legislatures primarily enact whistleblower laws to make a difference for society.

## **16. Institutional whistleblower channels.**

The Directive includes a new structural dimension for whistleblowing reports (Article 8(1)). Private institutions with over 50 workers (Articles 8(3)), and public employers in municipalities with over 10,000 inhabitants and 50 workers (Article 8(9)) must have official whistleblower channels to receive and follow through on reports and to share advice on anti-retaliation rights. The whistleblower office can be staffed by a third-party contractor (Articles 5(5) and 9(1)).

These institutions could be a valuable new paradigm that institutionalises legitimacy and focused organisational responses to whistleblowing reports. Without careful controls, however, they could be a weapon for bad faith or corrupt leaders to identify, discredit, and retaliate against those who threaten their misconduct. Even worse, ombudsmen and staff of remedial agencies repeatedly have faced retaliation themselves for helping whistleblowers.

From the anti-corruption perspective, a bad faith internal channel could be a vehicle for those guilty of crimes to learn the evidence against them before competent authorities see it. That is why the Directive provides whistleblowers with the freedom of choice between initially reporting internally or externally.

Further, the Directive has basic controls for establishment and structure of whistleblower offices. The private sector internal channels must be staffed by an 'impartial person' or department (Article 9(1)(c)), and they must comply with the Directive's confidentiality requirements (Article 9(1)(a)).

The Recital indicates that the channel should be independent and free from conflict of interest (such as a chief auditor or board member) and, where practical, report directly to the organisational chief (Recital, para. 56).

The requirements are similar but more detailed for channels at external government authorities. Similar to private institutions, the channels must be staffed by independent and autonomous staff or offices (Article 11(2) (a)), and they must comply with confidentiality requirements (Secs.12(1)(a) and (3)). Unlike the staff at private sector whistleblower channels, those at government authorities must undergo mandatory training on handling reports (Article 12(5)).

**Net compliance:** 15.5/27

**Substantial compliance:** (8) Austria, Belgium, France, Ireland, Italy,

Netherlands, Portugal, Spain

**Partial compliance:** (15) Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Sweden

**Non-compliance:** (4) Czech Republic, Estonia, Hungary, Lithuania

### **17. Whistleblower enfranchisement.**

The corollary to a legitimate structure is whistleblower enfranchisement to maximise the channel's legitimacy and impact. The whistleblower who raised an issue should be enfranchised in the process by receiving progress reports, contributing to the record, and being informed of the results. While whistleblowers are reporting parties rather than investigators or finders of fact, they are typically the most knowledgeable, concerned witnesses in the process.

For internal, or private sector, reporting channels, the Directive requires confirmed receipt of the report within seven days (Article 9(1)(b)), diligent follow-up (Article 9(1)(d)), and feedback within three months (Article 9(1)(f)). Again, the standards are more detailed for external, or government channels.

They must confirm receipt within seven days (Article 11(2)(b)), provide mandatory procedures to maintain contact and receive additional evidence from the whistleblower (Article 12(4)(c)), provide feedback within three to six months (Article 11(2)(d)), and tell the whistleblower the investigation's outcome (Article 11(2)(e)).

**Net compliance:** 24/27

**Substantial compliance:** (21) Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden

**Partial compliance:** (6) Bulgaria, Finland, Hungary, Latvia, Lithuania, Slovakia.

**Non-compliance:** None

### **18. Education and outreach.**

Rights will be irrelevant unless both targets and beneficiaries are

aware of, understand, and respect them. Society's cultural acceptance of whistleblower rights has as much or more impact than their technical provisions.

The Directive requires institutions to prominently post rights with clear, easily identifiable information at the workplace and outside, such as on an organisation's website (Article 9(1)(g); Recital, para. 59).

Each competent government authority must maintain easily identifiable, accessible website guidance for public guidance to potential whistleblowers on the full scope of Directive rights both for protection and reporting, relevant procedures, and confidentiality protection (Articles 13(a) and (f)); Recital, para. 89).

Independent of whistleblower channels, the Directive requires a nationalised information or administrative agency to provide clear, comprehensive guidance on rights and remedies for reports and public disclosures as well as assistance before remedial agencies assessing their rights.

Where provided by national law, the support agency should not only be an information resource but assist in advocacy and certify whether the person qualifies as a legally protected whistleblower (Article 20(1)).

**Net compliance: 23/27**

**Substantial compliance: (21) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain**

**Partial compliance: (4) Estonia, Germany, Portugal, Sweden**

**Non-compliance: (2) Denmark, Finland**

## **19. Transparency.**

Transparency is the most effective resource to meet the difficult challenge for whistleblowers to overcome ingrained bias and achieve societal solidarity through cultural acceptance.

The magic word to achieve solidarity is "results."

Citizens will aggressively rally behind whistleblowers as the vehicles for consequences that make their lives better by preventing accidents,

improving public health, and imposing accountability that effectively attacks corruption and abuses of power.

The Directive reinforces public awareness and support by requiring every Member State to provide an annual report containing – (1) the number of reports received by the competent authorities; (2) the number of investigations and proceedings initiated as a result of such reports and their outcome; and (3) if ascertained, the estimated financial damage and the amounts recovered following investigations and proceedings, related to the breaches reported (Article 27(2)).

**Net compliance: 23/27**

**Substantial compliance: (20) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Romania, Slovakia, Slovenia, Spain, Sweden**

**Partial compliance: (6) Denmark, Germany, Hungary, Lithuania, Netherlands, Portugal**

**Non-compliance: (1) Malta**

## **20. Review.**

It is extremely rare for institutions to get anything right the first time, and the birth of rights is no exception. Effective rights require a steady process of learning lessons to correct mistakes and keep pace with new, creative forms of misconduct and retaliation. To illustrate, the U.S. passed the world's first whistleblower law in 1978, and Congress is now preparing the fifth generation for those rights.

The Directive requires several layers of review. Competent authorities must review channels for effectiveness, at a minimum of every three years, and make appropriate modifications (Article 14).

Member States must submit to the Commission 'all relevant information regarding the implementation and application of this Directive', which will provide the basis for public reports to the European Parliament within four years on the Directive's impact, and recommendations within six years for modifications (Articles 27(1), (3) and (4)).

**Net compliance: 20.5/27**

**Substantial compliance: (19) Belgium, Bulgaria, Estonia, Finland,**

France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

**Partial compliance:** (3) Austria, Cyprus, Lithuania

**Non-compliance:** (5) Croatia, Czech Republic, Denmark, Germany, Latvia

# PART III: RECOMMENDATIONS



The following recommendations correspond directly to the 20 best-practice standards assessed in this report for issues where there were significant patterns of deviation from Directive requirements.

Each recommendation is designed to be implemented within Member States' constitutional and competence frameworks, including in areas where national authorities retain primary responsibility, such as national security, while strengthening coherence, closing loopholes, reducing fragmentation, and improving legal clarity in practice. Individual country assessments include further recommendations for discrete issues.

Several of our recommendations are drawn from or consistent with Transparency International's report, *How effective is whistleblower protection in the EU? Trends, gaps and emerging practices across member states*.

For example, we similarly encourage the European Commission to issue interpretive guidance for Member States, including guidelines, communications, FAQs, and toolkits; to make formal recommendations to Member States; to utilise and re-activate expert working groups or networks of whistleblower authorities to reinforce policy messaging and implementation effectiveness; to continue regular monitoring and reporting on implementation of the Directive (disaggregated by gender and other identity categories); and to pursue infringement procedures and penalties for non-compliance, including failure to establish reporting channels.

Furthermore, recognising that national penalties must be effective, proportional, and dissuasive in practice, which may vary by context, the Commission should develop criteria to assess effectiveness in future country-level reviews.

Additionally, civil society's role in providing confidential advice to whistleblowers is essential for the Directive's effectiveness, yet ambiguity regarding the protection of this activity undermines the Directive's

objectives. The Commission should clarify and reinforce this exchange as protected speech, including the right of civil society and the legal profession responsible for providing advice to store the whistleblower's confidential data and obtain necessary exemptions from rules that would otherwise prohibit such data storage.

Finally, the Commission should also clarify through interpretive guidance and compliance actions that Member States may not undermine the Directive's objectives through statutory design or interpretation that weakens protection in practice. Particular attention should be given to loopholes involving the timing of protection, such as frameworks in which protection attaches only upon formal submission of a report or where preparatory activities—including consultation, verification, or evidence gathering—fall outside protected conduct.

Even where the Directive does not explicitly codify these circumstances, such restrictions may defeat its objectives by weakening facilitator protection, discouraging responsible reporting, and exposing whistleblowers to retaliation before a disclosure can safely occur.

## Protection for Whistleblower Lawyers

Interpretive guidance should clarify that lawyers acting on behalf of whistleblowers are facilitators within the meaning of the Directive and should receive equivalent protection from retaliation.

Such protection should extend to their employers and professional organisations where retaliation is directed at them because of their representation of whistleblowers.

# 1. Comprehensive Horizontal Rights that Harmonise EU Directive and National Law (Standard 1)

Member States should enact or amend single, comprehensive horizontal whistleblower protection statutes that:

- apply uniform definitions, procedures, and remedies across all subject areas;
- supersede or align inconsistent sector-specific whistleblower provisions; and
- ensure equality of protection regardless of the legal field implicated by the disclosure, including in areas such as national security where

Member States retain primary competence.

This reform directly addresses the most significant structural source of chilling effects and legal uncertainty identified in the findings.

## **2. Broad Disclosure Rights with No Speech Loopholes (Standards 2, 3, and 8)**

Legislation should:

- explicitly protect disclosures made in the course of professional duties ('duty speech');
- protect freedom of choice between internal and external reporting channels for initial disclosures, without restrictive preconditions or sequencing requirements;
- protect all those connected with preparatory activities necessary for responsible reporting, rather than delaying protection until the moment of formal disclosure;
- preserve the Directive's public disclosure pathways based on reasonable belief; and
- prohibit blanket bans on initial disclosures to the media or civil society.

These measures are necessary to ensure that protected expression reflects how whistleblowing occurs in practice.

## **3. Protection Against Spillover and Non-Employment Retaliation (Standards 4 and 5)**

Member States should ensure that anti-retaliation protections explicitly cover:

- facilitators, colleagues, relatives, and associated persons who assist during the preparation or submission of a report; and
- those outside the workplace who facilitate a report or are associated

with the whistleblower, such as unions, NGOs, and the media.

Clear statutory coverage is essential to prevent indirect retaliation and isolation strategies.

## **4. Confidentiality and Comprehensive Anti-Retaliation Coverage (Standards 6 and 7)**

In addition to current protections, national frameworks should:

- establish clear limits and procedural safeguards governing discretionary breaches of confidentiality, including notice to the whistleblower and the opportunity to appeal;
- provide advance notice and clearly defined circumstances for mandatory disclosures of identity where required by law;
- require that confidentiality guarantees provided to whistleblowers are honoured by all receiving authorities, including in cross-border transfers, with clear duties to uphold equivalent standards and liability for any breach arising during onward transmission; and
- require that confidentiality rights travel with the case when evidence is forwarded to subsequent agencies.

Penalties for confidentiality breaches should be effective, proportionate, and dissuasive.

## **5. Access to Justice and Fair Evidentiary Rules (Standards 9, 10, and 11)**

Member States should amend procedural laws to:

- guarantee access to independent administrative and judicial remedies;
- ensure clear procedural pathways and competent fora for asserting whistleblower rights; and
- implement a true reverse burden of proof once retaliation and protected disclosure are shown, requiring employers to prove an action was not 'linked in any way' to lawful whistleblowing.

These safeguards are necessary for whistleblowers to have a realistic chance of prevailing.

## **6. Effective Remedies and Financial Viability (Standards 12, 13, and 14)**

Statutes consistently should provide:

- mandatory full compensation for all economic and non-economic harms;
- timely interim relief to prevent ongoing retaliation during proceedings; and
- coverage or reimbursement of legal fees and expert costs, with access to interim financial support when appropriate.

Without these measures, whistleblower rights remain largely symbolic.

## **7. Personal Accountability and Sanctions for Reprisals (Standard 15)**

To encourage deterrence, national laws should impose:

- personal administrative or civil liability on managers or officials responsible for retaliation; and
- significantly increased financial and criminal sanctions for obstruction, retaliation, confidentiality breaches, and vexatious litigation.

Institutional liability alone is insufficient to prevent repeat violations.

## **8. Institutional Channels and Whistleblower Enfranchisement (Standards 16 and 17)**

Member States should require:

- independence, adequate resources, training, and conflict-of-interest safeguards for internal and external reporting channels;
- anti-retaliation protection for those staffing channels; and
- procedures ensuring that substantiated reports are transmitted directly to the head of the institution for prompt response.

Channels must function as safe mechanisms to report evidence of misconduct, not exposure paths for wrongdoers.

## **9. Education, Outreach, and Transparency (Standards 18 and 19)**

Authorities for internal and external channels should:

- ensure clear, accessible public website guidance on whistleblower rights and procedures;
- require employers and authorities to publicise reporting options; and
- publish online aggregate data on reports, investigations, outcomes, and recoveries.

Transparency strengthens public trust and institutional accountability.

## **10. Review and Continuous Improvement (Standard 20)**

Member States should mandate periodic reviews with input from civil society and whistleblowers to:

- assess effectiveness;
- identify emerging retaliation patterns; and
- adapt protections to evolving risks and practices.

Sustainable whistleblower protection requires ongoing evaluation and reform.

# ENDNOTES

Thank you for taking the time to read *Raising the Floor: National Laws under the EU Whistleblower Directive*. Following this page, you'll find annexes enclosed with full country rankings, remedy definitions and terms, country reports, and more.

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WHISTLEBLOWING  
INTERNATIONAL  
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# ANNEXES I-VI

**Annexe N°1. Country Rankings**

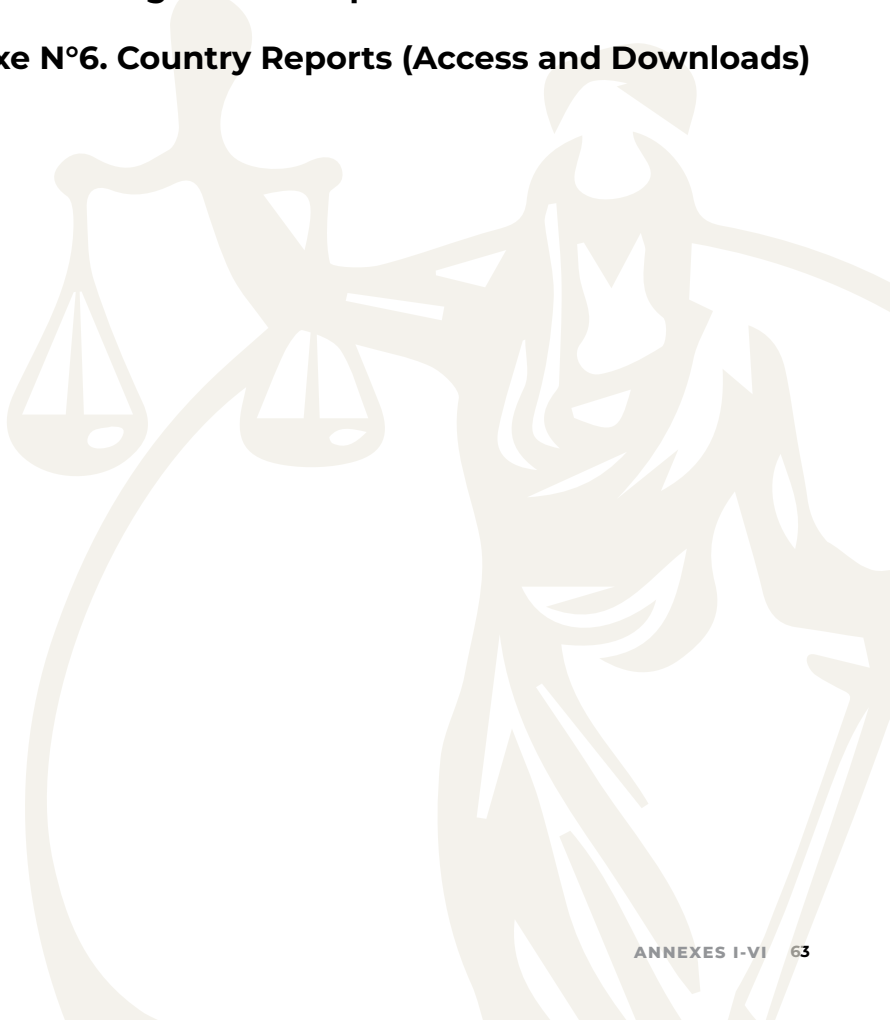
**Annexe N°2. Standard Indicator Ranking and Sub-Indicator Index**

**Annexe N°3. Remedy Definitions and Terms**

**Annexe N°4. Selected National Protections Exceeding Whistleblower Directive's Requirements**

**Annexe N°5. Significant Implementation Deviations**

**Annexe N°6. Country Reports (Access and Downloads)**



## Annexe N°1. Country Rankings



RANK	COUNTRY	SCORE (X/20)	SCORE (X/100)
1	Cyprus	18	90
2	Romania	18	90
3	Belgium	17	85
4	Bulgaria	17	85
5	Ireland	16.5	82.5
6	Slovakia	16.5	82.5
7	Slovenia	16.5	82.5
8	Spain	16.5	82.5
9	France	16	80
10	Italy	16	80
11	Greece	15.5	77.5
12	Malta	15.5	77.5
13	Poland	14	70
14	Latvia	14	70
15	Croatia	13.5	67.5
16	Czechia	13.5	67.5
17	Sweden	13	65
18	Hungary	13	65
19	Luxembourg	13	65
20	Lithuania	12.5	62.5
21	Austria	12	60
22	Netherlands	12	60
23	Finland	11.5	57.5
24	Portugal	11.5	57.5
25	Estonia	11.5	57.5
26	Denmark	10.5	52.5
27	Germany	10	50

# Annexe N°2. Standard Indicator Ranking and Sub-Indicator Index

This annexe contains the following information:

1. Standard indicator ranking
2. Sub-indicator index

## Standard Indicator Ranking

RANK	INDICATOR	COUNTRY COMPLIANCE	NET COMPLIANCE (X/27)	NET %
1	5 Protection both for employees and non-employees who report work-related information.	<b>Substantial compliance:</b> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.	25.5	94.44
		<b>Partial compliance:</b> Italy, Lithuania, Netherlands.		
		<b>Non-compliance:</b> None.		
2	7 Protection against full scope of harassment.	<b>Substantial compliance:</b> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Spain.	24.5	90.74
		<b>Partial compliance:</b> Netherlands.		
		<b>Non-compliance:</b> Portugal, Sweden.		
3	8 Shielding whistleblower rights from gag orders.	<b>Substantial compliance:</b> Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Malta, Poland,	24	88.89

		Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.		
		<b>Partial compliance:</b> Czech Republic, Greece, Lithuania, Netherlands.		
		<b>Non-compliance:</b> Luxembourg.		
<b>4</b>	<b>17</b> Whistleblower enfranchisement.	<b>Substantial compliance:</b> Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden.	<b>24</b>	<b>88.89</b>
		<b>Partial compliance:</b> Bulgaria, Finland, Hungary, Latvia, Lithuania, Slovakia.		
		<b>Non-compliance:</b> None.		
<b>5</b>	<b>18</b> Education and outreach.	<b>Substantial compliance:</b> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain.	<b>23</b>	<b>85.19</b>
		<b>Partial compliance:</b> Estonia, Germany, Portugal, Sweden.		
		<b>Non-compliance:</b> Denmark, Finland.		
<b>6</b>	<b>19</b> Transparency.	<b>Substantial compliance:</b> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Romania, Slovakia, Slovenia, Spain, Sweden.	<b>23</b>	<b>85.19</b>
		<b>Partial compliance:</b> Denmark, Germany,		

		Hungary, Lithuania, Netherlands, Portugal. <b>Non-compliance:</b> Malta.		
<b>7</b>	<b>3</b> Wide subject matter scope for scope of EU authority.	<b>Substantial compliance:</b> Belgium, Bulgaria, Croatia, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Sweden. <b>Partial compliance:</b> Czech Republic, Estonia, Greece, Lithuania, Poland, Slovenia, Spain. <b>Non-compliance:</b> Austria.	<b>22.5</b>	<b>83.33</b>
<b>8</b>	<b>4</b> Protection against spillover retaliation at the workplace.	<b>Substantial compliance:</b> Croatia, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden. <b>Partial compliance:</b> Austria, Belgium, Bulgaria, Czech Republic, Ireland, Latvia, Lithuania, Poland. <b>Non-compliance:</b> Estonia.	<b>22</b>	<b>81.48</b>
<b>9</b>	<b>10</b> “Merits test” to qualify for protection.	<b>Substantial compliance:</b> Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden. <b>Partial compliance:</b> Austria, Luxembourg. <b>Non-compliance:</b> Croatia, France, Germany, Portugal.	<b>22</b>	<b>81.48</b>

10	6 Reliable identity protection.	<b>Substantial compliance:</b> Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia.	21	77.78
		<b>Partial compliance:</b> Belgium, Finland, Latvia, Lithuania, Slovakia, Spain.		
		<b>Non-compliance:</b> Denmark, Germany, Sweden.		
11	20 Review.	<b>Substantial compliance:</b> Belgium, Bulgaria, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.	20.5	75.78
		<b>Partial compliance:</b> Austria, Cyprus, Lithuania.		
		<b>Non-compliance:</b> Croatia, Czech Republic, Denmark, Germany, Latvia.		
12	1 Comprehensive horizontal whistleblower rights that harmonise national law with the EU Directive.	<b>Substantial compliance:</b> Bulgaria, Czech Republic, Finland, France, Italy, Lithuania, Malta, Poland, Slovenia, Cyprus, Germany, Ireland, Luxembourg, Netherlands, Sweden, Romania, Slovakia.	20	74.07
		<b>Partial compliance:</b> Belgium, Croatia, Denmark, Latvia, Portugal, Spain.		
		<b>Non-compliance:</b> Austria, Estonia, Greece, Hungary.		
13	9 Right to a genuine day in court.	<b>Substantial compliance:</b> Belgium, Bulgaria, Croatia, Cyprus, Czech Republic,	19	70.37

		Finland, France, Ireland, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Sweden.		
		<b>Partial compliance:</b> Denmark, Estonia, Greece, Italy, Luxembourg, Spain.		
		<b>Non-compliance:</b> Austria, Germany, Hungary, Netherlands, Poland		
<b>14</b>	<b>14</b> Coverage for legal fees and costs.	<b>Substantial compliance:</b> Austria, Belgium, Bulgaria, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, Spain.	<b>16</b>	<b>59.26</b>
		<b>Partial compliance:</b> Croatia, Cyprus, Czech Republic, Estonia, France, Netherlands.		
		<b>Non-compliance:</b> Denmark, Finland, Germany, Ireland, Italy, Luxembourg, Portugal, Sweden.		
<b>15</b>	<b>16</b> Institutional whistleblower channels.	<b>Substantial compliance:</b> Austria, Belgium, France, Ireland, Italy, Netherlands, Portugal, Spain.	<b>15.5</b>	<b>57.41</b>
		<b>Partial compliance:</b> Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Sweden.		
		<b>Non-compliance:</b> Czech Republic, Estonia, Hungary, Lithuania.		
<b>16</b>	<b>13</b> Interim relief.	<b>Substantial compliance:</b> Belgium, Bulgaria, Croatia, Cyprus, Greece, Ireland, Italy, Latvia, Malta, Romania, Slovakia, Slovenia, Sweden.	<b>15</b>	<b>55.56</b>

		<p><b>Partial compliance:</b> Czech Republic, France, Lithuania, Spain.</p> <p><b>Non-compliance:</b> Austria, Denmark, Estonia, Finland, Germany, Hungary, Luxembourg, Netherlands, Poland, Portugal.</p>		
17	15 Personal accountability for reprisals.	<p><b>Substantial compliance:</b> Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Ireland, Luxembourg, Portugal, Spain.</p> <p><b>Partial compliance:</b> Bulgaria, Italy, Malta, Poland, Romania, Slovakia.</p> <p><b>Non-compliance:</b> Croatia, Denmark, Finland, Hungary, Latvia, Lithuania, Netherlands, Slovenia, Sweden.</p>	15	55.56
18	12 “Make whole” compensation.	<p><b>Substantial compliance:</b> Bulgaria, Cyprus, France, Hungary, Italy, Lithuania, Romania.</p> <p><b>Partial compliance:</b> Austria, Croatia, Czech Republic, Denmark, Greece, Ireland, Latvia, Malta, Poland, Slovakia, Slovenia, Spain, Sweden.</p> <p><b>Non-compliance:</b> Belgium, Estonia, Finland, Germany, Luxembourg, Netherlands, Portugal.</p>	13.5	50
19	11 Realistic standards to prove violations of rights.	<p><b>Substantial compliance:</b> Belgium, Bulgaria, Cyprus, Greece, Hungary, Latvia, Lithuania, Slovenia, Spain.</p> <p><b>Partial compliance:</b> Czech Republic, Denmark, Italy, Poland.</p>	11	40.74

		<b>Non-compliance:</b> Austria, Croatia, Estonia, Finland, France, Germany, Ireland, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Sweden.		
<b>20</b>	<b>2</b> Broad whistleblowing disclosure rights with 'no loopholes'.	<b>Substantial compliance:</b> Romania, Slovakia. <b>Partial compliance:</b> Belgium, Croatia, Cyprus, Denmark, Estonia, Germany, Ireland, Luxembourg, Netherlands, Spain, Sweden. <b>Non-compliance:</b> Austria, Bulgaria, Czech Republic, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovenia.	<b>7.5</b>	<b>27.78</b>

## Sub-Indicator Index

<b>SUB-INDICATOR</b>	<b>DESCRIPTION</b>	<b>NET COMPLIANCE (X/27)</b>	<b>NET %</b>
<b>2A</b>	Freedom to choose internal or external reporting channels.	<b>18.5</b>	<b>68.52</b>
<b>2B</b>	Protection for public disclosures under Directive criteria.	<b>23.5</b>	<b>87.04</b>
<b>2C</b>	Protection for disclosures made in the course of job duties ("duty speech").	<b>4</b>	<b>14.81</b>
<b>10A</b>	Protection based on reasonable belief, suspicion, grounds, or cause.	<b>22</b>	<b>81.48</b>
<b>10B</b>	No motive-based disqualifiers ("good faith").	<b>23.5</b>	<b>87.04</b>
<b>12A</b>	Economic damage.	<b>12</b>	<b>44.44</b>
<b>12B</b>	Non-economic damages (moral, distress, reputation).	<b>11</b>	<b>40.74</b>
<b>12C</b>	Restoration of status, contract, license, or equivalent relief.	<b>9.5</b>	<b>35.19</b>
<b>13A</b>	Availability of interim relief pending proceedings.	<b>14.5</b>	<b>53.7</b>
<b>14A</b>	Legal aid or reimbursement of fees and costs.	<b>15.5</b>	<b>57.41</b>

<b>15A</b>	Liability of natural persons.	<b>22.5</b>	<b>83.33</b>
<b>15B</b>	Sanctions are effective, proportionate, and dissuasive.	<b>12</b>	<b>44.44</b>
<b>16A</b>	Institutional independence and independent staffing (conflict free).	<b>13</b>	<b>48.15</b>
<b>16B</b>	Channel confidentiality safeguards.	<b>23</b>	<b>85.19</b>
<b>16C</b>	Training and competence.	<b>14.5</b>	<b>53.7</b>

## **Annexe N°3. Remedy Definitions and Terms**

This Annex defines the principal forms of remedies, damages, interim relief, and procedural protections necessary to provide effective redress for retaliation and other prohibited conduct.

These definitions reflect international best practice and incorporate the legal standards required under the **EU Whistleblower Directive (Directive (EU) 2019/1937)**, particularly Articles 19–21 and Recitals 87–97.

These remedies collectively ensure that reporting persons receive full compensation and effective protection, and that enforcement mechanisms are effective, proportionate, and dissuasive.

### **I. General Remedy Principles**

#### **Remedy**

A legal, administrative, or judicial measure designed to correct a violation of rights, compensate for harm, prevent further harm, or restore the injured party to the position they would have occupied in the absence of the violation.

#### **Relief**

The redress or corrective action granted by a court, tribunal, or competent authority. Relief may be monetary or non-monetary.

#### **Full or “Make Whole” Relief**

Compensation that fully restores the reporting person for all material and non-material damage suffered as a result of retaliation or other prohibited conduct.

Full compensation includes compensation for direct, indirect, past, present, and future harm.

Directive reference: Article 21(8); Recital 94

## II. Monetary Remedies (Damages)

### Consequential Damage (Economic or Pecuniary Damage)

Financial or economic harm resulting from retaliation or other prohibited conduct.

Material damage may include:

- Medical or rehabilitation expenses
- Moving expenses due to loss of home
- Lower credit and higher interest rates due to loss of job and salary
- Increased transportation costs
- Retraining costs
- Reduced income from substitute employment

Material damage corresponds to tangible pecuniary or economic damage.

Directive reference: Article 21(8); Recital 94

### Compensatory, Damage (Non-Economic or Non-Pecuniary Damage)

Non-financial harm suffered as a result of retaliation. Non-material damage may include:

- Psychological harm
- Emotional distress
- Damage to reputation
- Loss of professional standing
- Loss of dignity
- Pain and suffering
- Emotional distress

These harms must be compensable to ensure full compensation.

Directive reference: Recital 94

## **Back Pay**

Compensation for material damage consisting of lost wages, salary, and benefits between the date of retaliatory action and the date of resolution of proceedings or restoration of employment.

Back pay restores past financial salary losses.

## **III. Non-Monetary Remedies**

### **Nullification of Retaliatory Measures**

Legal invalidation or reversal of retaliatory acts.

This may include:

- Annulment of dismissal
- Removal of disciplinary sanctions
- Reversal of demotion
- Correction of records

## **IV. Interim Relief**

Temporary protective measures granted pending the conclusion of legal proceedings to prevent ongoing or imminent harm.

Examples include:

- Suspension of dismissal
- Temporary reinstatement
- Suspension of disciplinary measures
- Continuation of salary or benefits

Interim relief ensures the effectiveness of legal protection by preventing irreparable harm before final resolution.

Directive reference: Article 21(6); Recital 95

## **V. Legal Cost and Access Remedies**

### **Legal Costs**

Costs associated with legal proceedings, including administrative and court fees.

### **Attorney's Fees or Legal Representation Costs**

Costs of legal representation incurred in pursuing remedies or defending against retaliatory proceedings.

Recovery of legal costs ensures effective access to remedies.

### **Protection from Liability**

Protection ensuring that reporting persons shall not incur civil, criminal, or administrative liability for making protected disclosures, provided they had reasonable grounds to believe the information was true, and the disclosure was necessary.

This includes protection from liability for breaches of confidentiality or similar restrictions, except where acquisition of the information involved a criminal offence.

Directive reference: Article 21(2) and 21(7); Recital 97

## **VI. Terminology Alignment: EU Directive and Common Law Equivalents**

The Directive uses civil law terminology that corresponds to common law terms frequently used in international comparative analysis.

EU Directive Term	Common Law Equivalent	Explanation
Material damage	Pecuniary damages / Economic damages	Financial harm
Non-material damage	Non-pecuniary damages / Non-economic damages	Emotional and reputational harm
Full compensation	Make whole relief	Complete restoration
Restoration	Reinstatement and equitable relief	Return to prior status
Interim relief	Preliminary injunction / interim protection	Temporary protection
Protection from liability	Legal immunity	Protection from lawsuits or penalties
Burden of proof reversal	Burden shifting	Presumption of retaliation
Detriment	Adverse action	Harmful retaliatory act

## Summary

Effective whistleblower protection systems require remedies that:

- Fully compensate material and non-material harm,
- Provide compensation for future damage,
- Restore employment and professional status where possible,
- Provide interim protection pending resolution,
- Protect reporting persons from liability,
- Ensure accessible and effective enforcement mechanisms,
- Shift the burden of proof to require that whistleblowing be completely independent of subsequent prejudicial actions.

These remedies ensure meaningful protection and enforcement of whistleblower rights in accordance with Directive (EU) 2019/1937.

## Annexe N°4. Selected National Protections Exceeding Whistleblower Directive's Requirements

### Expanded protected subject matter/public-interest categories:

- **France** extends protected categories to include international law and public-interest disclosures.
- **Netherlands** explicitly includes public interest within protected categories.
- **Latvia and Romania** include protections relating to animal health/welfare (and Latvia also includes occupational safety), demonstrating that broader scopes can be legislated cleanly in national law.
- **Ireland** protects miscarriage of justice, oppressive or grossly negligent acts, gross mismanagement, exceeding the Directive's enumerated categories.
- **Poland** extends coverage to constitutional and human rights violation as named categories.

### Stronger protection for civil society support structures and legal counsel:

- **France, Germany, and Greece** extend protections to civil society organizations acting as facilitators.
- **Greece** also protects the whistleblower's lawyer, reinforcing access to assistance and reducing isolation risk.
- **Belgium** [FIRM](#) (Federal Institute for the protection and promotion of Human Rights) provides technical psychological, media and social support to whistleblowers and counsel in both sectors (public and private).
- **Slovakia** The Whistleblower Protection Office can directly fund private legal representation (providing stronger legal aid provision).

## Enhanced remedies and practical support:

- **France** allows courts to order attorney fees and living expenses, and extends liability shields more broadly than the Directive baseline.
- **Slovenia** includes remedies linked to unemployment benefits, illustrating how Member States can integrate whistleblower remedies into social protection systems.
- **Latvia** gives whistleblowers an entitlement to temporary relief, rather than merely permitting eligibility for relief and leaving it to judicial discretion. Whistleblowers who engage in protected speech have the right to temporary protection in civil proceedings and administrative proceedings in the court.
- **Bulgaria** *the external authority can certify whistleblower protection status, which freezes alleged retaliatory action pending inspection or court proceedings.*
- **Spain** has an established dedicated national and regional authority serving as the external channel hub, with authority to certify protection status, represent whistleblowers in court, and provide financial and psychological support.

## Strengthened institutional duties and coverage of key actors:

- **Cyprus** includes an affirmative employer duty to intervene against retaliation and establish a code of conduct, moving beyond passive anti-reprisal language.
- **Slovakia** extends protection to “Responsible Persons” staffing reporting channels, addressing a known vulnerability where those administering channels may themselves face retaliation.
- **Poland** extends anti-retaliation protection explicitly to constitutional freedoms and human rights, and includes soldiers, showing that strong protections can be legislated for sensitive sectors within national competence.
- **Lithuania** confidentiality extends to related persons.
- **Estonia** channel staff protected against retaliation.

# Annexe N°5. Significant Implementation Deviations

This annexe identifies recurring implementation patterns that risk undermining the objectives of Directive (EU) 2019/1937, highlighting structural risks, gaps, and restrictive approaches that may weaken core protections, frustrate its purpose, or become widespread erosive practices through applied interpretations or implementation.

## Structure of this Annexe

1. Restrictions on Protected Disclosures and Freedom of Expression
2. Narrowing of Eligibility and Protection Thresholds
3. Weaknesses in Enforcement and Remedies
4. Structural Weaknesses in Reporting Channels
5. Gaps in Scope and Legal Coverage
6. Specific Protection Gaps

## 1. Restrictions on Protected Disclosures and Freedom of Expression

### 1.1 Exclusion or Narrowing of Duty Speech and Ordinary Workplace Disclosures (Indicator 2, Sub-indicator 2C) (25/17)

In most Member States, protection is limited to disclosures made through formal reporting channels. Ordinary workplace communications—where a substantial proportion of disclosures arise—are excluded or insufficiently protected. This conditions protection on the use of prescribed channels, shifting the Directive's framework from protecting reporting to controlling it.

**Countries:** Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.

### 1.2 Restrictions on Freedom of Choice of Reporting Channels (Indicator 2, Sub-indicator 2A) (9/27)

Several Member States restrict the Directive's requirement that reporting

persons be free to choose between internal and external channels for initial disclosures. In these cases, whistleblowers are required to report internally first to alleged institutional wrongdoers or meet elevated thresholds equivalent to those for public disclosure.

**Countries:** Austria, Finland, Ireland, Italy, Lithuania, Malta, Portugal, Slovenia, Sweden.

### **1.3 Limitations on Public Disclosures (Indicator 2, Sub-indicator 2B) (3/27)**

Some national frameworks restrict or fail to fully implement the Directive's provisions allowing immediate public disclosure under exceptional circumstances. In certain cases, all disclosures to the media explicitly are unprotected.

**Countries:** Cyprus, Hungary, Poland.

## **2. Narrowing of Eligibility and Protection Thresholds**

### **2.1 Reintroduction of Motive-Based Tests ('Good Faith') (Indicator 10, Sub-indicator 10B) (2/27)**

Despite the Directive's shift to an objective 'reasonable belief' standard, some Member States continue to apply or reintroduce motive-based requirements. This allows the credibility of disclosures to be challenged based on the reporting person's intent.

**Countries:** France, Portugal.

### **2.2 Elevated Thresholds Beyond 'Reasonable Belief' (Indicator 10, Sub-indicator 10A) (5/27)**

Certain laws require a higher evidentiary threshold (e.g. 'justified suspicion' or 'serious grounds'), limiting protection to disclosures that can be substantiated. This departs from the Directive's ex ante standard, which protects reasonable but potentially mistaken reporting.

**Countries:** Austria, Croatia, France, Germany, Portugal.

### **2.3 Lack of Protection Prior to Formal Reporting (Indicator 7) (5/27)**

In some Member States, protection only arises at the moment a formal report is submitted, leaving individuals unprotected during preparatory phases.

**Countries:** Austria, Belgium (public sector), Bulgaria, Latvia, Poland.

### **3. Weaknesses in Enforcement and Remedies**

#### **3.1 Diluted or Inconsistent Reverse Burden of Proof (Indicator 11) (12/27)**

In these Member States, the burden of proof does not properly shift to the employer once the whistleblower presents initial evidence of retaliation and subsequent prejudice. They only have to prove that an action is justified, rather than independent of whistleblowing. This not only violates the Directive but encourages employers to conduct further retaliation investigations to find after-the-fact justifications.

**Countries:** Croatia, Czech Republic, Denmark, Estonia, Germany, Ireland, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia.

#### **3.2 Absence or Limitations of Interim Relief (Indicator 13, Sub-indicator 13A) (10/27)**

Interim relief is not consistently available or is subject to limitations that reduce its effectiveness. This may result in whistleblowers suffering irreparable harm before final resolution of multi-year lawsuits.

**Countries:** Austria, Denmark, Estonia, Finland, Germany, Hungary, Poland, Portugal, Slovakia, Sweden.

#### **3.3 Temporal Limitations on Protection (Indicator 13) (4/27)**

Some Member States frameworks impose restrictive time limits on protection or enforcement, such as ending it after two years or when an investigation is over. Employers are more than willing to wait.

**Countries:** Slovenia, Spain, Luxembourg, Portugal.

### **4. Structural Weaknesses in Reporting Channels**

#### **4.1 Inconsistent or Insufficient Safeguards (Indicator 16, Sub-indicator 16 A, B, C) (17/27)**

In many Member States, reporting channels lack clear requirements for independence, conflict-of-interest safeguards, training, or adequate resourcing. This creates risks for confidentiality, trust, and effective handling of disclosures.

**Countries:** Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovenia, Ireland.

## 5. Gaps in Scope and Legal Coverage

### 5.1 Fragmented or Parallel Legal Regimes (Indicator 1) (11/27)

In some Member States, the Directive transposition coexists with separate national frameworks, leading to inconsistent protections, procedures, and remedies.

**Countries:** Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Greece, Hungary, Luxembourg, Portugal, Spain.

### 5.2 Limitation to EU Law Violations (Indicator 1) (7/27)

Certain Member States restrict protection to breaches of EU law or impose additional thresholds for domestic violations, significantly narrowing the Directive's scope and resulting in confusing, inconsistent standards for reporting that will have a chilling effect.

**Countries:** Estonia, Greece, Hungary, Belgium (private sector), Croatia, Denmark, Spain.

## 6. Specific Protection Gaps

### 6.1 Abuse of Authority Not Adequately Covered (7/27)

Certain Member States frameworks fail to clearly protect disclosures relating to abuse of authority that creates unacceptable consequences but may not technically constitute a formal legal violation.

**Countries:** Austria, Czech Republic, Greece, Lithuania, Poland, Slovenia, Spain.

### 6.2 Restrictions on Litigation Defences (Indicator 8) (1/27)

Limitations on the use of documentary evidence in legal proceedings may undermine whistleblowers' ability to substantiate their claims.

**Country:** Sweden.

## Annexe N°6. Country Reports (Access and Downloads)

Detailed country assessments underpinning this analysis are available as companion reports. Each assessment provides a structured evaluation of national transposition of Directive (EU) 2019/1937 against the standard framework used in this report.

The country reports may be accessed individually or downloaded as a complete set using the links below.

*View or download the [combined PDF of all 27 Country Reports here.](#)*

- [Austria](#)
- [Belgium](#)
- [Bulgaria](#)
- [Croatia](#)
- [Cyprus](#)
- [Czech Republic](#)
- [Denmark](#)
- [Estonia](#)
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