

Securing Truth-telling: Whistleblower Protection for Investigative Journalists

Why Whistleblower Protection Should Be on Your Radar

Whistleblowers are a vital source of information for investigative journalism, often shedding light on corruption, tax evasion, human rights abuses, and environmental violations that might otherwise remain hidden. Their courage drives groundbreaking reporting that holds power to account and safeguards the public interest. Yet, whistleblowers too often face severe risks, ranging from workplace retaliation and loss of livelihood to legal threats and personal safety dangers.

While journalists are well-versed in the importance of source protection, they may not be fully leveraging opportunities to strengthen their practice provided by rapidly evolving whistleblower protection norms, which bolster freedom of expression and efforts to uphold the public's right to know. Investigative journalists are uniquely positioned to:

- ✓ **Facilitate Public Disclosures:** Transform whistleblower accounts into compelling narratives that drive accountability and reform.
- ✓ **Safeguard Whistleblowers:** Use innovative tools and evolving best practices to ensure anonymity and provide or signpost support measures for sources who risk being identified and suffering retaliation.
- ✓ **Champion Strong Protections:** Join advocacy efforts to strengthen whistleblower rights and share expertise on journalistic source protection to support effective implementation.

The EU Directive on Whistleblowing

[Directive \(EU\) 2019/1937](#) establishes minimum protections for whistleblowers across Europe, including those who disclose information to the media under certain conditions, and those who assist them. All 27 EU member states have enacted national laws to implement the Directive. While these reforms create a more predictable and secure environment for whistleblowers and those working with them, transposition of the Directive varies across the different national jurisdictions, with some countries taking a very minimalist approach and others providing a greater level of protection. Journalists should be mindful of this and find out more about these differences including with respect to the types of information ('material scope') that fall within the protections available to whistleblowers in their country.

Key Points for Journalists:

'Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers from retaliation increases legal certainty for potential whistleblowers and thereby encourages whistleblowing also through the media. In this respect, protection of

whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies.’ (Paragraph 46, Recitals, EU Directive).

Public Disclosure Protection

Under the EU Directive, **Article 15** protects whistleblowers who disclose information to journalists, covering situations where internal (to their employer) or external (to a competent authority) reports fail, are likely to fail, or there’s an imminent or manifest threat to public safety. Journalists should familiarise themselves with how Article 15 has been transposed into national law and the factors a court may consider when determining if a public disclosure is protected. Whistleblowers must be able to demonstrate why – and the factors they considered - they chose public disclosure.

The additional examination of the context in which a public disclosure is made (or threshold ‘tests’) translates into a higher evidential burden on the whistleblower in a court to show that a disclosure to a journalist was a reasonable action for them to take – it is not meant to act as a bar to all public disclosures.

Other protective elements of the Directive are designed to shield whistleblowers from unfair treatment or retaliation, regardless of where the disclosure was made. Some of these include:

- **Reversed burden of proof:** Where an individual claims they have been unfairly retaliated against as a result of making a ‘protected’ disclosure, the burden of proof is on the party who took the action to prove that they did not do so, making it easier for thus, for whistleblowers to access justice
- **Interim relief measures:** Whistleblowers may seek urgent remedies, such as reinstatement or financial support during legal disputes.
- **Immunities:** Whistleblowers are shielded from civil and criminal liability for making disclosures.

Recognition of facilitators

The Directive protects those who assist whistleblowers in a work-related context; in countries such as France, this extends to legal entities like unions and CSOs, offering reassurance for whistleblowers seeking advice or collaborating on reporting. While journalists aren’t explicitly covered, some - including the European Federation of Journalists (EFJ) - have suggested that these protections could be extended to them, given their role in supporting whistleblower disclosures.

Sanctions for retaliation

Those who expose the identity of whistleblowers or retaliate against them may face significant penalties, including criminalisation in some countries. Such measures are designed to effectively dissuade people from taking adverse actions against whistleblowers.

Anti-SLAPP measures

Most transposition laws to some extent have included measures to thwart ‘strategic litigation against public participation ‘SLAPP suits’ designed to intimidate or silence, including protecting whistleblowers against vexatious proceedings and sanctioning those who engage in vexatious



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proceedings. While SLAPPs often target journalists, they can also be aimed at their sources. Journalists should be aware of these essential protections, along with the [EU Directive against SLAPPs](#).

Empowering Investigative Journalists

- **Leverage the Law:** Familiarise yourself with the Directive and national laws to understand how new provisions may bolster protection for you and your sources, and be aware of any implementation gaps.
- **Support Whistleblowers:** Provide information and support to sources at risk of retaliation or identification and direct them to organisations offering independent advice and assistance.
- **Strengthen Alliances:** Build partnerships with whistleblower protection groups, legal advisors, and advocacy organisations to create a robust ecosystem of support for whistleblowers and journalists alike.
- **Showcase Success Stories:** Highlight whistleblowers' disclosures that have driven meaningful reform, helping shift the public perception and reduce stigma.
- **Audit Practices:** Review newsroom procedures and your own practice to align with the latest best practices and innovations for working with whistleblowers.
- **Invest in Training:** Stay updated on legal developments, source security tools, and best practices to continually improve your work with whistleblowers.

Resources for Action

- To track national implementation and emerging cases, **visit the [EU Whistleblowing Monitor](#).**
- **Navigate the Directive** with tailored recommendations for journalists in the *European Federation of Journalists'* [Transposition Guide for Media Freedom](#).
- **Connect with experts** and whistleblowing organisations through the *Whistleblowing International Network (WIN)* Transparency International chapters and Advocacy and Advice Centres.
- **Explore a collection of publications** of laws, analysis and best practice guidance at the *WIN Library*, including a dedicated category with several publications on Journalism and Source Protection.
- **Learn about anti-SLAPP** mechanisms and the *Coalition Against SLAPPs in Europe* [CASE Resources](#) to safeguard against malicious lawsuits targeting whistleblowers and investigative reporting.

Join the growing movement to protect whistleblowers and strengthen the fight for accountability!



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EU Directive on Whistleblowing – Key Provisions Guide

All EU member states have adopted new legislation to implement [Directive \(EU\) 2019/1937](#) which sets minimum standards to facilitate the reporting of breaches and protect reporting persons.

Transposition Matters: While the Directive aims to harmonise protection across the Union, there are differences in its transposition into national law, with ongoing compliance challenges that may impact legal certainty. Nevertheless, this wave of legislation is a significant step forward and introduces several ground-breaking provisions that trade unions should familiarise themselves with:

The Scope

What is protected: Reports of breaches of Union law, with some member states, extending to some or all national laws, specific wrongdoing, or harm to public interest (*Article 2*).

Who is protected: Covers a broad range of workers, inc. volunteers, trainees & contractors, shareholders, as well as third persons (family members or colleagues) & facilitators (*Article 4*).

Protection Measures

Identity: Strict rules that whistleblowing channels must ensure confidentiality (*Art 16*)

Remedies: Must include full compensation for any retaliation damage suffered (*Art. 19*)

Immunity: New wide-reaching immunities from civil & criminal liability for reporting & acquiring information (*Art 21*)

Interim Relief: Whistleblowers should have access to injunctive measures (*Art 21*)

Key Standards

Reasonable Belief: The motive for reporting is irrelevant & no proof is required, only reasonable grounds to believe (*Art 6*)

Reversed Burden of Proof: The evidential burden is switched to the retaliator (*Art 21*)

Reporting Channels

Mandatory Procedures: Employers (*Art 8*) & authorities must establish systems to receive, follow-up & feedback on reports (*Art 11*)

External & Public Disclosure: Reports can be made directly to national authorities (*Art 14*) & EU bodies (*Art 6*), & disclosed publicly (e.g. to the media) is protected in certain conditions (*Art 15*)

Penalties: Effective dissuasive sanctions for those who retaliate, breach confidentiality or hinder reporting (*Art 23*)

Support Measures: Whistleblowers must have access to guidance, advice & assistance, potentially extending to legal, financial or psychological support (*Art 20*)

For a list of national laws & emerging updates, visit the [EU Whistleblowing Monitor](#).



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