

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

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PARLIAMENT AND OF THE COUNCIL

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on the protection of persons who report breaches of Union law

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16, Article 43(2), Article 50, Article 53(1), Articles 91, 100, and 114, Article 168(4), Article 169, Article 192(1) and Article 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

After consulting the Committee of the Regions,

Having regard to the opinion of 30 November 2018 of the Group of Experts referred to in Article 31 of the Treaty establishing the European Atomic Energy Community,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) Persons who work for a public or private organisation or are in contact with such an organisation in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in that context. By reporting breaches of Union law that are harmful to the public interest, such persons act as ‘whistleblowers’ and thereby play a key role in exposing and preventing such breaches and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. In this context, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged at both Union and international level.
- (2) At Union level, reports and public disclosures by whistleblowers are one upstream component of enforcement of Union law and policies. They feed national and Union enforcement systems with information, leading to effective detection, investigation and prosecution of breaches of Union law, thus enhancing transparency and accountability.
- (3) In certain policy areas, breaches of Union law, regardless of whether they are categorised under national law as administrative, criminal or other types of breaches,

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may cause serious harm to the public interest, in that they create significant risks for the welfare of society. Where weaknesses of enforcement have been identified in those areas, and whistleblowers are usually in a privileged position to disclose breaches, it is necessary to enhance enforcement by introducing effective, confidential and secure reporting channels and by ensuring that whistleblowers are protected effectively against retaliation.

- (4) Whistleblower protection currently provided in the Union is fragmented across Member States and uneven across policy areas. The consequences of breaches of Union law with a cross-border dimension reported by whistleblowers illustrate how insufficient protection in one Member State negatively impacts the functioning of Union policies not only in that Member State, but also in other Member States and in the Union as a whole.
- (5) Common minimum standards ensuring that whistleblowers are protected effectively should apply as regards acts and policy areas where there is a need to strengthen enforcement, under-reporting by whistleblowers is a key factor affecting enforcement, and breaches of Union law can cause serious harm to the public interest. Member States could decide to extend the application of national provisions to other areas with a view to ensuring that there is a comprehensive and coherent whistleblower protection framework at national level.
- (6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. It is necessary, not only to prevent and detect procurement-related fraud and corruption in the context of the implementation of the Union budget, but also to tackle insufficient enforcement of rules on public procurement by national contracting authorities and contracting entities in relation to the execution of works, the supply of products or the provision of services. Breaches of such rules create distortions of competition, increase costs for doing business, undermine the interests of investors and shareholders and, in general, lower attractiveness for investment and create an uneven playing field for all businesses across the Union, thus affecting the proper functioning of the internal market.
- (7) In the area of financial services, the added value of whistleblower protection has already been acknowledged by the Union legislator. In the aftermath of the financial crisis, which exposed serious shortcomings in the enforcement of the relevant rules, measures for the protection of whistleblowers, including internal and external reporting channels, as well as an explicit prohibition of retaliation, were introduced in a significant number of legislative acts in the area of financial services as indicated by the Commission in its communication of 8 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector'. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU of the European Parliament and of the Council⁽⁴⁾ provides for whistleblower protection which applies in the context of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽⁵⁾.
- (8) As regards the safety of products placed on the internal market, businesses involved in the manufacturing and distribution chain are the primary source of evidence, with the

result that reporting by whistleblowers in such businesses has a high added value, since they are much closer to information about possible unfair and illicit manufacturing, import or distribution practices regarding unsafe products. Accordingly, there is a need to introduce whistleblower protection in relation to the safety requirements applicable to products regulated by the Union harmonisation legislation as set out in Annexes I and II to Regulation (EU) 2019/1020 of the European Parliament and of the Council⁽⁶⁾, and in relation to the general product safety requirements as set out in Directive 2001/95/EC of the European Parliament and of the Council⁽⁷⁾. Whistleblower protection as provided for in this Directive would also be instrumental in avoiding diversion of firearms, their parts and components and ammunition, as well as of defence-related products, since it would encourage the reporting of breaches of Union law, such as document fraud, altered marking and fraudulent acquisition of firearms within the Union where breaches often imply a diversion from the legal to the illegal market. Whistleblower protection as provided for in this Directive would also help prevent the illicit manufacture of homemade explosives by contributing to the correct application of restrictions and controls regarding explosives precursors.

- (9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety, which can endanger human lives, has already been acknowledged in sectorial Union acts on aviation safety, namely in Regulation (EU) No 376/2014 of the European Parliament and of the Council⁽⁸⁾, and maritime transport safety, namely in Directives 2013/54/EU⁽⁹⁾ and 2009/16/EC⁽¹⁰⁾ of the European Parliament and of the Council, which provide for tailored measures of protection for whistleblowers as well as specific reporting channels. Those acts also provide for the protection of workers who report their own honest mistakes against retaliation, so-called ‘just culture’. It is necessary to complement the existing elements of whistleblower protection in those two sectors, as well as to provide protection in other transport modes, namely inland waterway, road and railway transport, to enhance the enforcement of safety standards as regards those transport modes.
- (10) As regards the area of protection of the environment, evidence-gathering, preventing, detecting and addressing environmental crimes and unlawful conduct remain a challenge and actions in that regard need to be reinforced, as acknowledged by the Commission in its communication of 18 January 2018 entitled ‘EU actions to improve environmental compliance and governance’. Given that before the entry into force of this Directive, the only existing whistleblower protection rules related to environmental protection are provided for in one sectorial act, namely Directive 2013/30/EU of the European Parliament and of the Council⁽¹¹⁾, the introduction of such protection is necessary to ensure effective enforcement of the Union environmental *acquis*, the breaches of which can cause harm to the public interest with possible spillover impacts across national borders. The introduction of such protection is also relevant in cases where unsafe products can cause environmental harm.
- (11) Enhancing whistleblower protection would also contribute to preventing and deterring breaches of European Atomic Energy Community rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive waste. It would also strengthen the enforcement of the relevant provisions of Council Directive

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2009/71/Euratom⁽¹²⁾, concerning promotion and enhancement of an effective nuclear safety culture and, in particular, point (a) of Article 8b(2) of that Directive, which requires, inter alia, that the competent regulatory authority establishes management systems which give due priority to nuclear safety and promote, at all levels of staff and management, the ability to question the effective delivery of relevant safety principles and practices and to report in a timely manner on safety issues.

- (12) The introduction of a whistleblower protection framework would also contribute to strengthening the enforcement of existing provisions, and to preventing breaches of Union rules, in the area of the food chain and, in particular, on food and feed safety, as well as on animal health, protection and welfare. The different Union rules laid down in those areas are closely interlinked. Regulation (EC) No 178/2002 of the European Parliament and of the Council⁽¹³⁾ sets out the general principles and requirements which underpin all Union and national measures relating to food and feed, with a particular focus on food safety, in order to ensure a high level of protection of human health and consumers' interests in relation to food, as well as the effective functioning of the internal market. That Regulation provides, inter alia, that food and feed business operators are prevented from discouraging their employees and others from cooperating with competent authorities where such cooperation could prevent, reduce or eliminate a risk arising from food. The Union legislator has taken a similar approach in the area of animal health through Regulation (EU) 2016/429 of the European Parliament and of the Council⁽¹⁴⁾ establishing the rules for the prevention and control of animal diseases which are transmissible to animals or to humans and in the area of the protection and well-being of animals kept for farming purposes, of animals used for scientific purposes, of animals during transport and of animals at the time of killing, through Council Directive 98/58/EC⁽¹⁵⁾ and Directive 2010/63/EU of the European Parliament and of the Council⁽¹⁶⁾, as well as Council Regulations (EC) No 1/2005⁽¹⁷⁾ and (EC) No 1099/2009⁽¹⁸⁾, respectively.
- (13) The reporting of breaches by whistleblowers can be key to detecting and preventing, reducing or eliminating risks to public health and to consumer protection resulting from breaches of Union rules, which might otherwise remain hidden. In particular, consumer protection is also strongly linked to cases where unsafe products can cause considerable harm to consumers.
- (14) Respect for privacy and protection of personal data, which are enshrined as fundamental rights in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the 'Charter'), are other areas in which whistleblowers can help to disclose breaches, which can harm the public interest. Whistleblowers can also help disclose breaches of Directive (EU) 2016/1148 of the European Parliament and of the Council⁽¹⁹⁾ on the security of network and information systems, which introduces a requirement to provide notification of incidents, including those that do not compromise personal data, and security requirements for entities providing essential services across many sectors, for example energy, health, transport and banking, for providers of key digital services, for example cloud computing services, and for suppliers of basic utilities, such as water, electricity and gas. Whistleblowers' reporting in this area is particularly valuable for the prevention of security incidents that would affect key economic and social activities

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and widely used digital services, as well as for the prevention of any infringement of Union data protection rules. Such reporting helps ensure the continuity of services that are essential for the functioning of the internal market and the wellbeing of society.

- (15) Furthermore, the protection of the financial interests of the Union, which is related to the fight against fraud, corruption and any other illegal activity affecting Union expenditure, the collection of Union revenues and funds or Union assets, is a core area in which enforcement of Union law needs to be strengthened. The strengthening of the protection of the financial interests of the Union is relevant also for the implementation of the Union budget as regards expenditure that is incurred on the basis of the Treaty establishing the European Atomic Energy Community (Euratom Treaty). Lack of effective enforcement in the area of protection of the financial interests of the Union, including as regards prevention of fraud and corruption at national level, leads to a decrease of Union revenues and a misuse of Union funds, which can distort public investments, hinder growth and undermine citizens' trust in Union action. Article 325 of the Treaty on the Functioning of the European Union (TFEU) requires the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union. Relevant Union measures in this respect include, in particular, Council Regulation (EC, Euratom) No 2988/95⁽²⁰⁾ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽²¹⁾. Regulation (EC, Euratom) No 2988/95 is complemented, for the most serious types of fraud-related conduct, by Directive (EU) 2017/1371 of the European Parliament and of the Council⁽²²⁾ and by the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests of 26 July 1995⁽²³⁾, including the Protocols thereto of 27 September 1996⁽²⁴⁾, of 29 November 1996⁽²⁵⁾ and of 19 June 1997⁽²⁶⁾. That Convention and those Protocols remain in force for the Member States not bound by Directive (EU) 2017/1371.
- (16) Common minimum standards for the protection of whistleblowers should also be laid down for breaches relating to the internal market as referred to in Article 26(2) TFEU. In addition, in accordance with the case law of the Court of Justice of the European Union (the 'Court'), Union measures aimed at establishing or ensuring the functioning of the internal market are intended to contribute to the elimination of existing or emerging obstacles to the free movement of goods or to the freedom to provide services, and to contribute to the removal of distortions of competition.
- (17) Specifically, the protection of whistleblowers to enhance the enforcement of Union competition law, including concerning State aid, would serve to safeguard the efficient functioning of markets in the Union, allow a level playing field for business and deliver benefits to consumers. As regards competition rules applying to undertakings, the importance of insider reporting in detecting competition law infringements has already been recognised in the leniency policy pursued by the Commission under Article 4a of Commission Regulation (EC) No 773/2004⁽²⁷⁾ as well as with the recent introduction of an anonymous whistleblower tool by the Commission. Breaches relating to competition law and State aid rules concern Articles 101, 102, 106, 107 and 108 TFEU and rules of secondary law adopted for their application.