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IAACA Knowledge Nexus Webinar Series: **“Whistleblower Protection”**

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OVERVIEW

- ❖ **The EU Directive on Reporting Persons six years after: what have we learnt?**
- ❖ **The EU Network for Integrity and Whistleblowing (NEIWA)**
- ❖ **The Italian experience: bringing ANAC and civil society together to support whistleblowers**



Prior to the EU Directive

Only a few Member States had comprehensive legislation on whistleblowing

Source: European Commission
Factsheet - April 2018





The Directive (EU) 2019/1937 of the European Parliament on the protection of persons who report breaches of Union law

- Sets minimum standards at EU level aiming to guarantee a high level of effective protection for persons reporting EU breaches of rules (e.g. on public procurement, financial services, anti-money laundering, food safety, transport safety, consumer protection, protection of the environment, or public health).
- Requires Member States to ensure, amongst others, that:
 - whistleblowers have at their disposal effective channels to report breaches of EU rules
 - confidentially, both internally (within an organization) and externally (to a competent authority)
 - whistleblowers' reports are properly investigated and acted upon by the organizations and competent authorities
 - whistleblowers are protected from retaliation



The Directive (EU) 2019/1937 of the European Parliament on the protection of persons who report breaches of Union law

- **Three-tier reporting process**
- **Definition of the term “retaliation”**
- **Extended personal scope**
- **Extended duty of confidentiality**
- **Financial and Psychological support, supporting measures and full compensation for damages suffered**
- **Immunity from liability**
- **Reversal of the burden of proof**
- **Protection of persons assisting the whistleblower**
- **No waiver of right and remedies clause**
- **No regression clause**



From an act of disloyalty to an act of democratic accountability

Recital 31:

"Persons who provide information about threats or harm to the public interest obtained in the context of their work-related activities exercise the **right to freedom of expression**. The right to freedom of expression and information, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights, includes the right to receive and impart information, as well as freedom of the press and pluralism."



From good faith to reasonable belief

Recital 33

"To be protected, whistleblowers must **reasonably believe**, in light of the circumstances and the information available to them at the time of reporting, that their report is true. This is an essential safeguard against harmful, frivolous, or offensive reporting, ensuring that those who, at the time of reporting, deliberately and knowingly report incorrect or misleading information do not enjoy protection. At the same time, it ensures that protection exists when the whistleblower has reported inaccurate facts due to a genuine error."



From WHO reports to WHAT is reported

Recital 33:

«The whistleblower's motives at the time of reporting should be irrelevant to the protection of the whistleblower.»

- "depersonalization" of reporting.
- shift from the whistleblower's intentions to the facts reported by the whistleblower.



EC Report on Transposition (2024)

The report assesses the compliance with the Directive of the transposition measures adopted by the Member States and highlights the main shortcomings:

- All Member States have transposed the Directive's main provisions, but the transposition needs to be improved on certain key areas, such as the material scope, the conditions for protection and the measures of protection against retaliation, in particular the exemptions from liability and the penalties.
- The Commission regrets the overall very late transposition of the Directive.
- The Commission will continue to monitor Member States' compliance with the Directive and will take appropriate measures to ensure the correct transposition, including by launching infringement proceedings where necessary.



Lessons Learnt

Good legislation is only the first step.

Effective implementation of whistleblowing must overcome cultural resistance to the institution.

Whistleblowing is everyone's business.

Institutions and civil society should embrace whistleblowing as a "human anti-corruption tool," that is, focus their attention on support and protection.

International cooperation is essential for developing advanced protection systems.

Awareness remains a prerequisite for any cultural shift.



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NETWORK OF EUROPEAN INTEGRITY AND WHISTLEBLOWING AUTHORITIES

ESTABLISHMENT OF NEIWA



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NEIWA was established in **MAY 2019** at the first meeting in Hague.

Initiated by the Dutch Whistleblowing Authority.

Reaction to the passing of the **DIRECTIVE**.

**PLATFORM TO EXCHANGE KNOWLEDGE,
EXPERIENCES AND IDEAS,**
on both a practical and a strategic level.

Initially **8** authorities.



MISSION STATEMENT



- 23 EU countries and 35 authorities.
- Platform to EXCHANGE KNOWLEDGE, documentation, initiatives, case law and best practices.
- Proper TRANSPOSITION OF EU DIRECTIVE 2019/1937 on reporting persons by Member States and practical implementation in Member States.
- COLLABORATION between NEIWA members and national, European, and international public organizations for the development of common activities in the areas of whistleblowing and integrity.
- PROMOTION AND DISSEMINATION of NEIWA's experience, knowledge and recommendations and active engagement of stakeholders, including civil society and legislators.

MEETING IN ROME, March 2023





The Italian experience: bringing ANAC and civil society together to support whistleblowers

EU Directive, Article 20: Support measures

1. Member States shall ensure that the persons referred to in Article 4 have access, as appropriate, to support measures.

ANAC is working with the Italian NGOs that provide support measures to whistleblowers, such as information, assistance, free consultations on reporting procedures and the protection from retaliation offered by national and EU legislation, on the rights of the person involved, as well as on the terms and conditions for accessing legal aid.



The Italian experience: bringing ANAC and civil society together to support whistleblowers

ANAC established a permanent collaboration with recognized NGOs.

Training sessions on the Italian legislation and ANAC Guidelines; practical cases and the functioning of ANAC Whistleblowing Office; how to write a whistleblowing report; ANAC external channel and platform; psychosocial support for whistleblowers and best practices; whistleblowing and privacy.

