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EVALUATION OF THE EU WHISTLEBLOWER PROTECTION DIRECTIVE 2019/1937

CONTRIBUTION TO AN AD-HOC CONSULTATION BY THE EUROPEAN COMMISSION

The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 40 national and trade union organisations from most European countries, with a total of more than 6 million individual members in public services and the private economy. Founded in 1990, CESI is a recognised European sectoral social partner and advocates improved employment conditions for workers in Europe and a strong social dimension in the EU.

Introductory remarks and main points

CESI welcomes the European Commission's initiative to evaluate Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. The Directive represents a significant milestone in promoting transparency, accountability and the rule of law across the European Union, including for workers in an employment context. It has established a common legal framework to encourage the reporting of misconduct while seeking to protect those who speak up in the public interest.

However, experiences shared by CESI member organisations from across Europe demonstrate that legal transposition and formal compliance alone are insufficient. Across Member States, workers continue to face significant practical barriers when reporting wrongdoing by others, and existing protection mechanisms frequently fail to prevent retaliation or provide effective remedies. Fear of retaliation, insufficient remedies, inaccessible reporting systems and the perception that whistleblowing mechanisms primarily serve corporate compliance all undermine confidence in the current system.

Only a whistleblower protection framework that workers genuinely trust will enable the Directive to fulfil its objectives of protecting workers, strengthening labour rights, safeguarding the public interest and reinforcing the rule of law across the EU.

CESI therefore calls for the evaluation to focus on the improvement of the directive's practical effectiveness in safeguarding citizens' and workers' rights. CESI considers the evaluation an important step to highlight the need to:

- better recognise and sanction indirect and informal retaliation,
- pursue adequate remedies, including reinstatement where appropriate,
- further promote anonymous reporting wherever technically feasible,
- establish better functioning accessible and transparent reporting channels,

- guarantee meaningful feedback and traceability throughout reporting procedures,
- ensure trade unions and workers' representatives play an active role in the governance of reporting systems,
- ensure effective protection of vulnerable categories of workers and protection against workplace misconduct beyond criminal offences,
- promote comprehensive training and awareness-raising for workers and worker representatives, and
- conduct regular evidence-based evaluations of the Directive's practical effectiveness.

1. Strengthening protection against any form of retaliation

The prohibition of retaliation is a cornerstone of the Directive. Nevertheless, evidence from CESI member organisations indicates that protection remains incomplete in practice.

➤ Retaliation remains difficult to prove

In Germany, for instance, although the applicable national law to transpose the Directive, the Hinweisgeberschutzgesetz (HinSchG), introduced a reversal of the burden of proof related to dismissals as retaliation against whistleblowing under §36(2), courts, including the Federal Labour Court, still require workers to establish a plausible causal link between their report and subsequent dismissal. In practice, this significantly weakens the intended protection, as proving such causation is often impossible.

Furthermore, during the first six months of employment, workers may be dismissed without cause, rendering whistleblower protection for workers ineffective during their probationary period.

Under §37 HinSchG, workers subjected to retaliation generally receive only financial compensation. There is no guaranteed right to reinstatement or return to their previous position.

➤ Protection must extend beyond dismissal

CESI members from, for instance, Spain and Italy reported that retaliation increasingly takes subtle forms which are not always considered in the implementation of the Directive. Workers report experiencing:

- exclusion from promotion opportunities,
- unjustified negative performance evaluations,
- non-renewal of temporary contracts,
- workplace isolation,
- stress or psychosocial stress as a result of harassment, and
- informal pressure and intimidation.

These forms of socio-labour retaliation are often more difficult to prove than formal disciplinary measures but may have equally serious consequences.

2. Ensuring that reporting systems inspire trust

Workers will only report wrongdoing if they trust that reporting systems are independent, accessible, confidential and capable of protecting them from adverse consequences. This is not what reality reflects.

At national level, workers often face a lack of available and safe reporting mechanisms. Once the reporting is done there is frequently no follow-up, traceability or transparency as to the current state of play of the complaint, leaving workers in very vulnerable positions.

Reporting mechanisms, although compulsory, often seem to be made difficult to find in order to discourage their use.

➤ Confidentiality alone is not sufficient

In Germany, under the above-mentioned HinSchG law, employers are required to ensure confidentiality but are not obliged to establish anonymous reporting channels or process anonymous reports. Workers therefore face the difficult choice between remaining silent or risking exposure and retaliation.

➤ Accessibility and transparency must improve

In Spain, for instance, many employers formally establish internal reporting channels while making them deliberately difficult to locate. Reporting portals may be hidden within complex intranet structures or inaccessible external websites, creating a barrier for workers to report.

Equally concerning is the frequent absence of meaningful feedback once reports have been submitted. Workers frequently enter what has been described as an ‘informational black hole’, with no possibility of monitoring the progress of their case. There are often no mandatory usability standards for internal reporting channels, no clear visibility and accessibility requirements, no secure tracking systems enabling whistleblowers to follow the progress of their reports, and no enforceable deadlines for communication with whistleblowers.

3. Recognising whistleblowing as a worker right and ensuring trade union participation

Several CESI affiliates have warned that whistleblowing systems are increasingly treated as corporate compliance mechanisms rather than instruments for protecting workers and the public interest.

Many reporting systems are managed exclusively by company management, human resources departments or external compliance providers, with little involvement from workers’ representatives. This undermines the confidence of workers in the independence of reporting procedures.

Moreover, meaningful whistleblowing procedures need trade unions and workers’ representatives with a role in:

- designing internal reporting procedures,
- monitoring their functioning,
- participating in regular audits,
- supporting whistleblowers throughout the reporting process, and
- promoting safeguards through collective bargaining.

4. Protection against workplace misconduct and for vulnerable workers

➤ **Protection should cover serious workplace misconduct**

In Germany, for instance, CESI affiliates have raised concerns regarding criminal offences, administrative violations and other forms of misconduct, including unethical behaviour, structural workplace bullying and other serious workplace abuses which are not always pursued under the Directive. Workers who report such behaviour may still face retaliation despite acting in good faith.

➤ **Vulnerable workers require stronger protection**

In Italy, CESI members have highlighted specific difficulties faced by vulnerable workers when whistleblowing, including temporary workers, agency workers, subcontracted workers, workers within supply chains, and workers employed by multinational enterprises operating centralised reporting systems far removed from local industrial relations contexts.

5. Building awareness, expertise and confidence in whistleblowing

Legal protection alone cannot ensure effective whistleblowing. Workers, along with managers and employers, must clearly understand:

- what constitutes whistleblowing,
- how whistleblowing differs from grievances, harassment complaints or health and safety reports,
- how reporting procedures operate, and
- what protections they can expect.

CESI therefore calls for further support for systematic training for workers, managers and workers' representatives to improve understanding of whistleblower protection across workplaces.

6. Monitoring and Evidence-Based Evaluation

CESI appreciates the availability of national reporting data, for example, in the annual reports of the Federal Ministry of Justice in Germany, which indicates that more than 1,800 reports were submitted to the Federal Office of Justice in 2024, alongside over 800 telephone consultations.

However, in Germany, a broader evaluation of the legislation originally foreseen for 2025 has not yet been completed. Without comprehensive evaluations that move beyond data collection and formal transposition monitoring, it remains difficult to assess whether legal protections are producing the intended outcomes.

CESI therefore supports regular, evidence-based evaluations focusing on practical effectiveness rather than solely legislative implementation.