

To: The European Commission

Attn: Directorate-General for Justice and Consumers

Subject: Evaluation of Directive (EU) 2019/1937 on the protection of whistleblowers

Brussels, April 2026

To the Attention of the European Commission,

On behalf of CHANCE – Civil Hub Against organised Crime in Europe, a network that consolidates the efforts of associations, movements, and activists across the continent, we submit this formal contribution to the evaluation of Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

Since its official launch at the European Parliament in 2019, CHANCE has been committed to fostering a European society rooted in equity, solidarity, and social justice. Our mission is defined by the proactive confrontation of organised crime, systemic corruption, and the erosion of democratic checks and balances. In this context, we recognise that the Directive was born from the necessity to address the indispensable role of whistleblowers as guardians of the public interest who feed the evidentiary chain, enabling effective detection, investigation, and prosecution of breaches that threaten the fundamental values enshrined in Article 11 of the EU Charter of Fundamental Rights.

As the Commission exercises its mandate under Article 27(3) to evaluate the Directive's impact and the potential necessity for extending its scope, CHANCE draws attention to the fact that a legislative revision of the Directive at this stage may be premature. The *de facto* implementation and operability of national transposition laws were fully achieved in multiple jurisdictions only towards the end of 2023. Our network's monitoring indicates that current vulnerabilities do not necessarily stem from the Union's normative framework, but rather from the complexities encountered during national transposition and subsequent practical application. Therefore, initiating a revision of the Directive prematurely while the national jurisprudence is only beginning to take shape would be a strategic setback which risks exacerbating existing legal uncertainties and further disrupting the delicate process of institutional adaptation.

A premature revision of the Directive could generate operational inconsistencies and procedural confusion within national institutions and private organisations that are currently in the early stages of assimilating the whistleblowing framework. These entities require consolidation and technical support to refine existing processes, rather than a new cycle of legislative adaptation. Consequently, CHANCE posits that the Commission's primary focus should remain on monitoring the quality of transposition and addressing practical implementation challenges. We believe that, prior to any structural overhaul of the Directive, priority should be given to enhancing the capacity of national authorities and judiciaries and ensuring that whistleblower protections are applied substantively and effectively in practice. In light of the aforementioned considerations, we wish to highlight several focal points where the Directive's provisions have permitted problematic national transpositions, thereby creating significant challenges in legal and administrative practice.

A vulnerability arises from the restrictive transposition of Article 2, leading to a fragmentation of protection standards. While the Directive establishes common minimum standards, its application at the national level has frequently facilitated a narrow, sector-specific interpretation. This approach effectively isolates disclosures concerning breaches of Union law from the broader framework of national law, which exceeds the topics addressed in the Annex (criminal law, for instance), as well as professional ethics, sectoral standards, etc. In some states, such implementation undermines the principle of non-regression, particularly in jurisdictions that previously maintained broader protection regimes. By conditioning protection upon the strict alignment of a report with the sectoral categories listed in the Directive's Annex, a state of legal uncertainty is created for the whistleblower. The protracted process required to determine material competence exposes whistleblowers to potential retaliation, transforming a protective mechanism into a procedural barrier that discourages the disclosure of irregularities affecting the public interest.

The implementation of Article 21 (Measures for protection against retaliation) in certain national frameworks has shifted the emphasis from the objective standard of the information's veracity (the "reasonable grounds" standard) to a subjective analysis of the whistleblower's intent or "good faith". This approach contrasts with the Directive's objective, which seeks to provide protection based on a reasonable belief in the necessity of the report to reveal a breach. This weakens the whistleblower's position before judicial authorities and increases uncertainty regarding legal protection, ultimately deterring the use of reporting channels.

Furthermore, allowing Member States the possibility to establish a hierarchy of reporting channels and public disclosure in the application of Article 15 has proved problematic. Certain transpositions have established stringent criteria for demonstrating an "imminent or manifest danger to the public interest" or a risk of collusion at the level of competent authorities, making it excessively difficult for whistleblowers to address channels other than internal ones. Such procedural rigidity limits the whistleblower's capacity to react in emergencies or in instances where internal and

external channels are perceived as ineffective or compromised. Along with the challenges highlighted above, it restricts transparency and democratic oversight, affecting the balance between institutional confidentiality and the public's right to be informed.

Beyond these regulatory leeways — which we strongly believe can be addressed through measures other than amending the Directive — the primary obstacles reside in the national transposition and subsequent enforcement phases. Our monitoring data across CHANCE network jurisdictions highlight a lack of trust among potential whistleblowers, driven by the perceived or actual failure of reporting channels (particularly in the public sphere) to ensure effective protection. In many instances, implementation has remained superficial, with internal and external channels lacking the requisite independence and structural guarantees to prevent conflicts of interest. The “facade implementation” is also grounded on a lack of specialised expertise among responsible personnel, judicial authorities, and legal practitioners. Such institutional gaps frequently result in internal procedures that reflect a fundamental misunderstanding of the Directive's primary objective. In addition, our monitoring highlights a structural gap between formal compliance and the technical and operational quality of reporting channels. In many cases, channels rely on insecure or inadequate tools, such as standard email systems, which undermine confidentiality guarantees. The Commission should promote the adoption of high-security, encrypted, and preferably open-source reporting platforms, alongside clear usability standards, including plain language communication, user guidance (e.g. FAQs), and full compliance with digital accessibility requirements.

Protection frameworks should not be limited to legal safeguards. Effective whistleblowing systems must include access to psychological support and, where necessary, financial assistance mechanisms, in order to mitigate the personal and professional risks associated with reporting. Without such complementary measures, legal protection alone remains insufficient to ensure the practical ability to report wrongdoing. Finally, to support enforcement, particular attention should be paid to ensuring that whistleblowing frameworks are inclusive and accessible to vulnerable groups, taking into account the differentiated risks of retaliation and barriers to reporting.

In light of these considerations, CHANCE recommends that the European Commission prioritise communications and technical guidelines aimed at harmonising the application of provisions susceptible to restrictive national interpretations. Specifically, we recommend clarifying the limits for the “reasonable grounds” requirement (Article 21), ensuring that protection is based on the veracity of the information at the time of reporting rather than a subjective assessment of intent. Clear guidance on the “work-related context” and “material scope” (Article 2), to prevent the exploitation of exclusions related to national security or professional secrecy (Article 3) as systemic shields for wrongdoing, is also needed. For instance, while the Directive does not affect the secrecy of judicial deliberations, these derogations must not permit the categorical exclusion of judicial personnel from the protective framework through misinterpretations of the status of “workers”.

We recommend that the European Commission enhance its monitoring mechanisms and ensure that national frameworks align with the substantive “spirit” of the Directive, preventing Member States from leveraging a literal or narrow interpretation of the text to diminish protections. This oversight must prioritise the assessment of the operational efficiency of reporting channels, ensuring they provide genuine confidentiality and independence. Furthermore, evaluating whether national penalty regimes fulfil the requirements of Article 23 regarding effectiveness, dissuasiveness, and proportionality would be welcome. We recommend that the monitoring focus on whether sanctions are sufficiently robust to compel organisational compliance, thereby preventing the emergence of window-dressing systems where derisory penalties fail to motivate the correction of institutional deficiencies. Sanctioning regimes should not only address acts of retaliation, but also failures in the duty to protect, including the absence of functional reporting channels or breaches of confidentiality obligations. Sanctions must be sufficiently severe and dissuasive to prevent superficial or merely formal compliance.

CHANCE network emphasises that in jurisdictions where national transpositions do not permit anonymous reporting and simultaneously enforce a rigid channels hierarchy, the whistleblowing framework remains non-operational. To counteract the inherent power imbalance, the Commission should encourage Member States to adopt and effectively support anonymous reporting mechanisms. Anonymity serves as a necessary safeguard that balances the risks associated with the prioritisation of internal channels. Therefore, we recommend that the Commission’s guidance highlights anonymity not merely as an optional feature, but as a safeguard for ensuring the substantive functionality of the Directive in jurisdictions where internal channels are preferred.

Finally, CHANCE recommends that the European Commission leverage existing and future funding instruments to prioritise initiatives focused on the specialised training of personnel responsible for the whistleblowing cycle. It is essential that financial support is directed towards comprehensive capacity-building programmes for designated personnel within competent authorities, as well as for members of the judiciary, including judges, prosecutors and lawyers. Professionalisation efforts ensure that the institutional response to whistleblowing matures from a reactive, formalistic approach to a proactive system capable of safeguarding the public interest. Equally important, the role of civil society organisations should be formally recognised within national whistleblowing ecosystems. Trusted and experienced organisations can act as intermediaries, providing guidance, support, and safe access points for potential whistleblowers. The Commission should encourage Member States to integrate civil society actors into official support frameworks.

We remain at your disposal for further technical consultations and are available to provide additional data from our network’s European and national actions aimed at whistleblower protection. We trust that these contributions will support the Commission in ensuring a more effective protective framework across the Union.

Sincerely,

On behalf of CHANCE – Civil Hub Against orgaNised Crime in Europe
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