

## POLICY SHEET FOR EFFECTIVE WHISTLEBLOWER PROTECTION

EUROPEAN PUBLIC SERVICE MEDIA'S VIEWS ON THE DRAFT DIRECTIVE

The EBU welcomes the fact that the European Commission issued a proposal for a Directive on the protection of persons reporting on breaches of Union law and sees it as an important step. It however would like to see further improvement on public reporting generally.

### WHAT IS AT STAKE?

The EBU, like other stakeholders in the European media, believes it is indeed crucial to acknowledge the importance of the protection of whistleblowers against intimidation and retaliation in democracies. The European Commission says that *"Whistleblowers can help to detect, investigate and sanction abuses of EU law. They also play an important role in enabling journalists and the free press to play their fundamental role in our democracies."*

This understanding should be translated into appropriate rules that do not de facto discourage them from turning to the media. Whistleblowers should therefore be best placed to determine themselves whom they will turn to, to disclose the information they have uncovered; it is essential that they may share it with the media if appropriate.

### MEMBER STATES OFFERING PROTECTION



The Member States offering comprehensive protection are France, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Sweden, Slovakia and the United Kingdom.

In Cyprus and Latvia whistleblowers have practically no protection and in the remaining 17 Member States whistleblowers are only partially protected (i.e. only in certain sectors, such as financial services or only in the public sector or only against limited forms of retaliation)

## EBU KEY PRIORITIES FOR AN EFFECTIVE EU DATA PROTECTION FRAMEWORK

1. The draft Directive acknowledges that sufficient whistleblower protection is needed to ensure freedom of expression and media freedom, as well as the public's right to access information. It also emphasizes the important role of whistleblowers as sources for investigative journalism, allowing the profession to fulfil its 'watchdog' role. Yet, the text establishes a strict hierarchy (tiered use) in reporting channels, prioritizing internal and external channels over public disclosure, which would be made possible only as a last resort, exceptional solution. These complex reporting procedures as a precondition for protection hamper both whistleblowers and journalists in their ability to fulfil their role. They could even be a disincentive for whistleblowers to share their information with the media, as they would risk losing their protection. Such deterrents would be in contradiction with the aim of improving the exercise of fundamental rights and freedoms, as enshrined in the Charter of Fundamental Rights.

It should be for the reporting person to determine the most appropriate disclosure channel, including publication in the media, taking into account the rights and legitimate interests at stake. In other words a reporting person should be protected if he/she has reasonable grounds to believe that the public interest would be best served by public disclosure.

2. The proposed Directive covers only certain policy fields, listed exhaustively, where whistleblower protection "is necessary to strengthen enforcement of Union rules whose breaches can cause serious harm to the public interest". Unfortunately, this complex construction limits its scope to only these sectors, whereas the ultimate goal should be the creation of a coherent and comprehensive framework protecting whistleblowers equally, whatever the field so long as EU has competence.

The Directive should be all-encompassing and apply to the protection of people reporting on any unlawful activity or abuse of law which undermines the public interest.

3. In its proposed Directive, the European Commission aims to encompass the broadest possible range of categories of persons, who, by virtue of work-related activities, have privileged access to information. The non-exhaustive list of examples however does not explicitly address civil servants.

For the sake of clarity, public servants should be specifically mentioned in the Directive, since they may not have the status of "workers" as defined by national law.

### **Eventually, uncovering wrongdoing increases the likelihood that it is prevented and sanctioned, and ensures that legislation is better enforced.**

The protection of whistleblowers and the protection of journalistic sources are complementary and an essential element of media freedom. Some of these principles have been taken up by a number of EU Member States in recent years. A large number of Member States are currently considering new legislation with a view to introducing or strengthening whistleblower protection. However, even the legislative projects envisaged do not point to a convergence based on uniform standards across the EU.

Now is the chance to enshrine this principle in our legislation in a practical and effective manner, making it a safeguard for freedom of speech and citizens' trust in the rule of law.