



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Responses from The Commission for Communications Regulation ("ComReg")

To Department of Public Expenditure and Reform Consultation:

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

(EU Whistleblowing Directive)



Question 1. Should Ireland avail of the option to require anonymous reports be accepted and followed-up? Please provide reasons for your answer.

No, in ComReg's submission it is not appropriate to require anonymous reports to be accepted and followed up, though as a secondary position ComReg would suggest that this be left to the discretion of individual entities. This is for two principal reasons. First, ComReg considers that there are more than adequate protections in place to provide an appropriate level of comfort to anyone who wishes to make a discreet report, while allowing total anonymity would not be appropriate. Second, allowing anonymity makes it extremely difficult to follow up properly and to obtain any relevant evidence. It also more easily facilitates nuisance or vexatious reports and does not, in ComReg's view, lend an appropriate seriousness to the making of such a disclosure.



Question 2 Should Ireland provide that private sector entities with fewer than 50 employees should establish internal reporting channels and procedures? If yes, what sectors should this requirement apply to? Please provide reasons for your answer.

Generally, ComReg deals with larger entities. However, in our submission, the issue here is all about the level of burden on the entities in question. We note that smaller operators can generate significant volumes of consumer complaints and that from the perspective of the individual consumer, it is irrelevant whether an entity has fewer than 50 employees. We also note that in certain areas, such as Premium Rate Services, it is possible to provide services to very substantial numbers of consumers with a very small number of employees. Here, there can be significant amounts of money involved even though the entities in question may employ only a small number of personnel. There can also be significant potential for consumer harm, which is not adequately represented by the size (in terms of personnel) of the entity. Therefore, on balance, ComReg would favour establishing internal reporting channels and procedures for smaller entities, so long as these procedures are not too onerous or burdensome.



Question 3

Recital 49 of the Directive provides that “*This Directive should be without prejudice to Member States being able to encourage legal entities in the private sector with fewer than 50 workers to establish internal channels for reporting and follow-up, including by laying down less prescriptive requirements for those channels than those laid down under this Directive, provided that those requirements guarantee confidentiality and diligent follow-up*”. Should Ireland lay down less prescriptive requirements for channels for private entities with fewer than 50 employees? What should these requirements be?

In principle, ComReg has no issue with setting down less prescriptive requirements for legal entities in the private sector with fewer than 50 workers than those laid down under this Directive, so long as the effectiveness of the regime is not thereby diluted.



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Question 4: Should Ireland exempt public sector bodies with fewer than 50 employees from the obligation to establish internal reporting channels? Please provide reasons for your answer

In principle ComReg has no issue with exempting public sector bodies with fewer than 50 employees so long as there is no negative impact on effectiveness. In this context, ComReg does not see any particularly good reason for discrimination as between the public and private sectors. However, ComReg notes that it has no evidential basis for its comments in this regard.



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Question 5 Should Ireland provide that municipalities (local authorities in the Irish context) can share internal reporting channels? Please provide reasons for your answer.

ComReg makes no submission in respect of this question.



Question 6

Section 7 of the Protected Disclosures Act provides that the Minister for Public Expenditure and Reform can prescribe any person by reason of the nature of their responsibilities to receive reports of wrongdoing. This is similar to the approach taken in other countries with whistleblower protection legislation, such as France and Latvia. Some countries, such as the Netherlands, have a single competent authority that receives reports and either refers them on appropriate authorities for follow up or follows up itself. Should Ireland continue with the current approach to designating competent authorities or should an alternative model be considered? Please provide reasons for your answer.

ComReg would favour a continuation of the present system rather than moving to a single competent authority. In ComReg's submission, such a move would dilute the sectoral expertise that can be brought to bear on complaints made to the specialised/sectoral Competent Authority.



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Question 7 What procedures under national law should apply in Ireland in respect of communicating the final outcome of investigations triggered by the report, as per paragraph 2(e) of Article 11? Please provide reasons for your answer.

ComReg makes no submission in this regard, but queries whether there is a need for elaborate procedures here or whether the law as it stands is fit for purpose.



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Question 8 - Should Ireland provide that competent authorities may close or prioritise reports received in accordance with paragraphs 3, 4 and 5 of Article 11? Please provide reasons for your answer.

ComReg would welcome this discretion, which it thinks is entirely appropriate, and very useful both in the handling of disclosures and managing the resources required to deal with disclosures.



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Question 9 - What measures of support should Ireland provide for reporting persons? What mechanisms might be used to provide such support? Who should provide that support? Please provide reasons for your answer.

ComReg makes no submission in respect of this question.



Question 10 - What penalties should Ireland impose under this Article? What will make these penalties “effective, proportionate and dissuasive”? Please provide reasons for your answer.

In ComReg’s submission, so long as any penalty regime put in place provides for genuinely effective, proportionate and dissuasive penalties, this will be sufficient. However, in this regard, ComReg would note the importance of providing for penalties that both punish and deter.