

Consultation on 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)

Template answer sheet

Purpose of this consultation

The Department of Public Expenditure and Reform invites submissions to a public consultation on the transposition of Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons who report breaches of Union law (commonly referred to as the “EU Whistleblowing Directive”).¹

This Directive, which must be transposed by **17 December 2021**, aims to set a common minimum standard across EU Member States for the protection of persons who report information about threats or harm to the public interest obtained in the context of their work-related activities.

This consultation is seeking views on the use of Member State options – i.e. those matters contained within the Directive in respect of which Member States can or must make a choice as regards implementation. Interested parties are asked to bear in mind that, except for the exercise of these options, Member States, including Ireland, are obliged to implement the Directive.

Submissions

Submissions are invited on the transposition of the Directive in Irish law. In particular, answers to the questions raised in this consultation document are sought. A separate response template is provided. Completing the template will assist in achieving a consistent approach in responses returned and facilitate collation of responses.

Respondents are requested to make their submissions by email to:-

Email: PDconsultation@per.gov.ie

The closing date for receipt of submissions is **17:00, Friday, 10 July 2020**. Please clearly mark your submission in the subject line of your email as “Consultation on the Transposition of the EU Whistleblowing Directive”.

The Department regrets that on account of the measures it has had to put in place in respect of the Covid-19 pandemic it cannot receive hardcopy submissions by post.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=EN>

Data Protection and Freedom of Information

Please note that, in the interests of transparency, the Department intends to publish the content of all submissions received in response to this consultation and the identity of the party making the submission, including their name and the organisation they are affiliated to (if any). Any submission containing commercially sensitive or private or confidential material should therefore clearly identify that portion of the submission which contains such information and specify the reasons for its sensitivity.

All personal information contained in the submissions received under this consultation will be collected, processed and stored in accordance with the Data Protection Acts and the General Data Protection Regulation (GDPR).

All submissions will also be subject to the Freedom of Information Act 2014 and may be released or published on foot of third party applications or otherwise.

For further information on how the Department will use the personal data collected in the course of this consultation, please refer to the Privacy Notice, which is a separate document published at the same time as this consultation document.

Question 1

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

Anonymous reports should be accepted and followed up. These are self-limiting in so far as further information or evidence cannot be requested and a response to the anonymous person outlining what actions have been taken is not possible. However, anonymous reports may prevent harm, particularly in circumstances where the person making the report works in close proximity to the person or persons causing the breach (potential) breach or is in a junior position to that person.

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.

Are Charities considered private entities? If so, then yes. Charities often rely on volunteers and they in turn have a perspective on the running of a organisation which provides insight that employees or Board Members may not have. Furthermore Charities often have a particularly direct relationship with vulnerable groups in society and should not be exempt from facilitating protected disclosures, from service users, volunteers or employees.

Other private sector entities should also establish internal reporting channels and procedures. This should apply to private healthcare (hospitals, nursing homes) and commercial entities, as well as family owed entities.

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? Please provide reasons for your answer.

The objective of the Directive is to protect employees/volunteers/contractors etc from discrimination because of a disclosure of potential wrong doing made in good faith by the person concerned. Less prescriptive requirements should not adversely impact on this protection just because an organisation has less than 50 employees or is in the private sector. An established procedure, reflecting best practice and consistently applied across all sectors reduces the risk of challenge and ambiguity.

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

No. For the reasons outlined above.

Question 5

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

The IBTS has no view on this.

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.

There are strengths and weaknesses to both approaches, but on balance, the current practice in Ireland of nominated competent authorities works.

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.

It is reasonable to expect that the reporting person is notified of the outcome of any investigation carried out on the information they have provided.

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.

In respect of Paras 3,4 & 5 of Article 11, it is proportionate and preferable that competent authorities have the discretion to manage reports and investigations as they see fit.

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.

There should be clear information provided at the outset to the individual with regard to their Data Protection Rights as they apply here, for instance so that they are aware of who will process the information they provide, who it will be shared with, how long it will be retained etc.

Confidential third party support/advice guidance might be provided to reporting persons who are experiencing challenges/difficulties at work that cannot be managed through internal procedures or in instances whereby the reporting persons is not comfortable speaking with internal representatives.

Organisations could train employees, as they do for support contact persons for Dignity @ Work issues, to provide confidential support to reporting persons.

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.

The IBTS has no view on this.