

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

CHAPTER V

**PROVISIONS APPLICABLE TO INTERNAL AND EXTERNAL REPORTING**

*Article 16*

**Duty of confidentiality**

1 Member States shall ensure that the identity of the reporting person is not disclosed to anyone beyond the authorised staff members competent to receive or follow up on reports, without the explicit consent of that person. This shall also apply to any other information from which the identity of the reporting person may be directly or indirectly deduced.

2 By way of derogation from paragraph 1, the identity of the reporting person and any other information referred to in paragraph 1 may be disclosed only where this is a necessary and proportionate obligation imposed by Union or national law in the context of investigations by national authorities or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.

3 Disclosures made pursuant to the derogation provided for in paragraph 2 shall be subject to appropriate safeguards under the applicable Union and national rules. In particular, reporting persons shall be informed before their identity is disclosed, unless such information would jeopardise the related investigations or judicial proceedings. When informing the reporting persons, the competent authority shall send them an explanation in writing of the reasons for the disclosure of the confidential data concerned.

4 Member States shall ensure that competent authorities that receive information on breaches that includes trade secrets do not use or disclose those trade secrets for purposes going beyond what is necessary for proper follow-up.

*Article 17*

**Processing of personal data**

Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be carried out in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by Union institutions, bodies, offices or agencies shall be undertaken in accordance with Regulation (EU) 2018/1725.

Personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay.

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*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.*

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## Article 18

### Record keeping of the reports

1 Member States shall ensure that legal entities in the private and public sector and competent authorities keep records of every report received, in compliance with the confidentiality requirements provided for in Article 16. Reports shall be stored for no longer than it is necessary and proportionate in order to comply with the requirements imposed by this Directive, or other requirements imposed by Union or national law.

2 Where a recorded telephone line or another recorded voice messaging system is used for reporting, subject to the consent of the reporting person, legal entities in the private and public sector and competent authorities shall have the right to document the oral reporting in one of the following ways:

- a by making a recording of the conversation in a durable and retrievable form; or
- b through a complete and accurate transcript of the conversation prepared by the staff members responsible for handling the report.

Legal entities in the private and public sector and competent authorities shall offer the reporting person the opportunity to check, rectify and agree the transcript of the call by signing it.

3 Where an unrecorded telephone line or another unrecorded voice messaging system is used for reporting, legal entities in the private and public sector and competent authorities shall have the right to document the oral reporting in the form of accurate minutes of the conversation written by the staff member responsible for handling the report. Legal entities in the private and public sector and competent authorities shall offer the reporting person the opportunity to check, rectify and agree the minutes of the conversation by signing them.

4 Where a person requests a meeting with the staff members of legal entities in the private and public sector or of competent authorities for reporting purposes pursuant to Articles 9(2) and 12(2), legal entities in the private and public sector and competent authorities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form.

Legal entities in the private and public sector and competent authorities shall have the right to document the meeting in one of the following ways:

- a by making a recording of the conversation in a durable and retrievable form; or
- b through accurate minutes of the meeting prepared by the staff members responsible for handling the report.

Legal entities in the private and public sector and competent authorities shall offer the reporting person the opportunity to check, rectify and agree the minutes of the meeting by signing them.