

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 VI

**PROTECTION MEASURES**

*Article 19*

**Prohibition of retaliation**

Member States shall take the necessary measures to prohibit any form of retaliation against persons referred to in Article 4, including threats of retaliation and attempts of retaliation including in particular in the form of:

- (a) suspension, lay-off, dismissal or equivalent measures;
- (b) demotion or withholding of promotion;
- (c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- (d) withholding of training;
- (e) a negative performance assessment or employment reference;
- (f) imposition or administering of any disciplinary measure, reprimand or other penalty, including a financial penalty;
- (g) coercion, intimidation, harassment or ostracism;
- (h) discrimination, disadvantageous or unfair treatment;
- (i) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment;
- (j) failure to renew, or early termination of, a temporary employment contract;
- (k) harm, including to the person's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- (l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- (m) early termination or cancellation of a contract for goods or services;
- (n) cancellation of a licence or permit;
- (o) psychiatric or medical referrals.

## Article 20

### Measures of support

1 Member States shall ensure that persons referred to in Article 4 have access, as appropriate, to support measures, in particular the following:

- a comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned;
- b effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive; and
- c legal aid in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council<sup>(1)</sup>, and, in accordance with national law, legal aid in further proceedings and legal counselling or other legal assistance.

2 Member States may provide for financial assistance and support measures, including psychological support, for reporting persons in the framework of legal proceedings.

3 The support measures referred to in this Article may be provided, as appropriate, by an information centre or a single and clearly identified independent administrative authority.

## Article 21

### Measures for protection against retaliation

1 Member States shall take the necessary measures to ensure that persons referred to in Article 4 are protected against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8 of this Article.

2 Without prejudice to Article 3(2) and (3), where persons report information on breaches or make a public disclosure in accordance with this Directive they shall not be considered to have breached any restriction on disclosure of information and shall not incur liability of any kind in respect of such a report or public disclosure provided that they had reasonable grounds to believe that the reporting or public disclosure of such information was necessary for revealing a breach pursuant to this Directive.

3 Reporting persons shall not incur liability in respect of the acquisition of or access to the information which is reported or publicly disclosed, provided that such acquisition or access did not constitute a self-standing criminal offence. In the event of the acquisition or access constituting a self-standing criminal offence, criminal liability shall continue to be governed by applicable national law.

4 Any other possible liability of reporting persons arising from acts or omissions which are unrelated to the reporting or public disclosure or which are not necessary for revealing a breach pursuant to this Directive shall continue to be governed by applicable Union or national law.

5 In proceedings before a court or other authority relating to a detriment suffered by the reporting person, and subject to that person establishing that he or she reported or made a public disclosure and suffered a detriment, it shall be presumed that the detriment was made in

retaliation for the report or the public disclosure. In such cases, it shall be for the person who has taken the detrimental measure to prove that that measure was based on duly justified grounds.

6 Persons referred to in Article 4 shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with national law.

7 In legal proceedings, including for defamation, breach of copyright, breach of secrecy, breach of data protection rules, disclosure of trade secrets, or for compensation claims based on private, public, or on collective labour law, persons referred to in Article 4 shall not incur liability of any kind as a result of reports or public disclosures under this Directive. Those persons shall have the right to rely on that reporting or public disclosure to seek dismissal of the case, provided that they had reasonable grounds to believe that the reporting or public disclosure was necessary for revealing a breach, pursuant to this Directive.

Where a person reports or publicly discloses information on breaches falling within the scope of this Directive, and that information includes trade secrets, and where that person meets the conditions of this Directive, such reporting or public disclosure shall be considered lawful under the conditions of Article 3(2) of the Directive (EU) 2016/943.

8 Member States shall take the necessary measures to ensure that remedies and full compensation are provided for damage suffered by persons referred to in Article 4 in accordance with national law.

#### *Article 22*

### **Measures for the protection of persons concerned**

1 Member States shall ensure, in accordance with the Charter, that persons concerned fully enjoy the right to an effective remedy and to a fair trial, as well as the presumption of innocence and the rights of defence, including the right to be heard and the right to access their file.

2 Competent authorities shall ensure, in accordance with national law, that the identity of persons concerned is protected for as long as investigations triggered by the report or the public disclosure are ongoing.

3 The rules set out in Articles 12, 17 and 18 as regards the protection of the identity of reporting persons shall also apply to the protection of the identity of persons concerned.

#### *Article 23*

### **Penalties**

1 Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:

- a hinder or attempt to hinder reporting;
- b retaliate against persons referred to in Article 4;
- c bring vexatious proceedings against persons referred to in Article 4;
- d breach the duty of maintaining the confidentiality of the identity of reporting persons, as referred to in Article 16.

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*Status: This is the original version (as it was originally adopted).*

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2 Member States shall provide for effective, proportionate and dissuasive penalties applicable in respect of reporting persons where it is established that they knowingly reported or publicly disclosed false information. Member States shall also provide for measures for compensating damage resulting from such reporting or public disclosures in accordance with national law.

#### *Article 24*

#### **No waiver of rights and remedies**

Member States shall ensure that the rights and remedies provided for under this Directive cannot be waived or limited by any agreement, policy, form or condition of employment, including a pre-dispute arbitration agreement.

- (1) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters ([OJ L 136, 24.5.2008, p. 3](#)).