



ASSESSING WHISTLEBLOWING LEGISLATION

Methodology and guidelines for assessment against
the EU Directive and best practice

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INTRODUCTION

In 2019, the European Union adopted the “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” (Whistleblower Protection Directive). EU Member States are required to transpose the provisions of the Directive into national law by 17 December 2021. This is an opportunity for all EU countries to bring their national legal framework on whistleblower protection in line with international standards and best practice.

The Directive contains many advanced provisions, such as the obligations for a wide range of entities to establish internal whistleblowing mechanisms, to follow up on reports and to keep the whistleblower informed. However, it also has some significant gaps, for example¹:

- The material scope of the Directive is limited and only protects whistleblowers who report breaches of EU law in defined areas.
- Several categories of persons exposed to risks of retaliation are not covered, such as civil society organisations (CSOs) that provide advice and support to whistleblowers, or persons who are believed or suspected to be whistleblowers, even mistakenly.
- Provisions on access to remedial measures against retaliation are not sufficient to guarantee full reparation for the damage suffered by whistleblowers.
- It does not require Member States to accept and follow up on anonymous reports.
- It does not clearly place an obligation on organisations to support and protect whistleblowers who report internally.
- It does not provide for penalties when organisations or individuals fail to fulfil their obligations under the Directive.

It is important therefore that EU Member States adopt national legislation on whistleblower protection that not only meets the minimum standards of the Directive but that also goes beyond the Directive, to meet international standards and best practice². As such, this methodology is designed to enable assessment of national legislation on whistleblower protection against both the minimum standards set by the EU Directive and best practice.

PURPOSE OF THE METHODOLOGY

The methodology is primarily designed to support **stakeholders from EU countries** (including Transparency International (TI) national chapters, other civil society organisations, policymakers and EU actors) to ensure an optimal transposition of the EU Directive. However, it is also designed to

¹ For a full discussion of the strengths and weaknesses of the EU Directive, please see: Transparency International (2019). *Building on the EU Directive for Whistleblower Protection. Analysis and Recommendations*, Position Paper #1/2019

² See **Annex 2: Key Sources Consulted**. The two principle sources on which the methodology is based are the EU Directive, around which the indicators are structured and Transparency International's 2018 *Best Practice Guide for Whistleblowing Legislation* (which combines Transparency International's 2013 principles with additional guidance on, and examples of, what constitutes current best practice).

support **stakeholders from countries beyond the EU** to advocate for strong whistleblower protection legislation based on internationally recognised best practice.

For both groups of stakeholders, the methodology allows assessment of current national legislation, as well as draft laws and amendments throughout the legislative process. Specifically, it is designed to:

- support civil society and other actors to
 - call for improvements to **draft or existing** whistleblower protection legislation, where this is considered inadequate
 - call for **adoption** of comprehensive standalone whistleblower protection legislation where this is non-existent or piecemeal
 - **monitor amendments** to draft or existing whistleblower protection legislation and guard against backsliding
- support policy makers, legislators and other actors in the **design** of whistleblower protection legislation, including in formulating concrete legislative text.

It is important to recognise that the methodology does not address the implementation of legislation, nor the institutional capacities and resources required to implement it, although the latter is addressed to a limited degree insofar as such considerations can be expected to be included under whistleblower protection legislation.

It is also important to emphasise that the aim of the methodology is to identify where existing/draft laws could be strengthened and how, rather than to serve as the basis for any kind of index which compares legislation across jurisdictions.

APPROACH AND SCOPE

Approach

The methodology adopts a modular approach, in two parts: (A) Compliance with the EU Directive, and (B) Assessment against best practice.

Stakeholders from EU countries are strongly encouraged to conduct first Part A and then Part B in order to ensure a comprehensive assessment and avoid any gaps. Completing Part B should be relatively straightforward once part A has been completed, given that there is considerable overlap and cross-referencing between the two. Therefore, the burden of completing both parts of the assessment is not as heavy as it may at first appear.

Stakeholders from countries beyond the EU can skip directly to Part B of the assessment should they so choose. However, they may also choose to assess legislation against the EU Directive (Part A) should they feel this is a useful benchmark for their advocacy.

Scope

Ideally, the methodology would be applied to a single law/piece of (draft) legislation (whether that be a standalone whistleblower protection law or a sub-section of a larger law). However, where the national legal framework on whistleblower protection has been developed in a piecemeal way, it can be applied to the relevant provisions of multiple pieces of legislation, although this will require some additional preliminary steps, as follows:

1. Firstly, conduct a brief mapping of the legislation in order to identify the relevant provisions on whistleblower protection in the jurisdiction in question.
2. Secondly, decide on the scope of the assessment. For example, if the legislation takes a sectoral approach to whistleblower protection, you may decide to focus on (one) specific sector(s), although this will mean that the assessment will have some significant gaps. Ideally, the assessment should have as broad a scope as possible in order to help highlight the weaknesses and gaps inherent in piecemeal approaches.
3. Thirdly, map the relevant provisions against the indicators in the methodology in order to identify which indicators need to be assessed against multiple pieces of legislation. (You may also find at this stage that certain indicators are not applicable to any of the provisions you have identified because the piecemeal approach to whistleblower protection has resulted in some gaps across the statute books. Where this is the case, it should be highlighted as a key weakness.)
4. Finally, based on the revised scope, proceed with the assessment as outlined below.

In addition, it is worth bearing in mind that even where a single piece of whistleblower protection legislation exists, it may be necessary to look beyond the law itself to get a complete picture. For example, provisions of labour law or civil liability law may be relevant regarding relief for retaliation. With regards to minimum standards for internal and external reporting procedures (see Dimension II: Reporting channels and procedures), the legislation may refer to secondary regulations or other guidance in certain national contexts. In such cases, it may be necessary to consult such additional sources when assessing the relevant indicators.

Finally, researchers may also need to consider situations where national whistleblower protection legislation includes provisions which are not addressed by the indicators. While such cases are likely to be quite rare given the comprehensive nature of the indicators, where they do occur, researchers should use their judgement as to whether such provisions are positive or detrimental in light of best practice, and include a short narrative explanation of such conclusions when reporting the overall findings (see Part 3: “Presenting Findings and Recommendations”).

CONDUCTING THE ASSESSMENT

ASSESSMENT FRAMEWORK: DIMENSIONS AND INDICATORS

The core of the assessment is structured around a set of 25 indicators clustered under four dimensions as set out in Table 1 below. These are based on a mapping of existing principles and standards on whistleblower protection legislation³. The structure of the indicators largely mirrors the structure of the EU Directive.

Table 1: Assessment dimensions and indicators

DIMENSION	NO	INDICATOR
I. SCOPE, DEFINITIONS, AND CONDITIONS FOR PROTECTION	1	Material scope: Reportable information
	2	Personal scope: Public and private sectors
	3	Personal scope: Definition of a reporting person
	4	Personal scope: Protected third parties
	5	Conditions and thresholds for protection
II. REPORTING CHANNELS AND PROCEDURES	6	Multiple reporting avenues
	7	Obligations for public and private entities
	8	Internal reporting and follow-up: Procedures
	9	Internal reporting and follow-up: Information and communication

³ See **Annex 2: Key Sources Consulted**. The two principle sources on which the methodology is based are the EU Directive, around which the indicators are structured and Transparency International's 2018 *Best Practice Guide for Whistleblowing Legislation* (which combines Transparency International's 2013 principles with additional guidance on, and examples of, what constitutes current best practice).

	10	Establishing external reporting mechanisms
	11	External reporting and follow-up: Procedures
	12	External reporting and follow-up: Information and communication
	13	Public disclosures
III. PROTECTION MEASURES	14	Duty of confidentiality
	15	Data protection
	16	Anonymity
	17	Prohibition of retaliation
	18	Support measures
	19	Protection measures against retaliation: Rights and remedies
	20	Protection measures against retaliation: Burden of proof
	21	Protection measures against retaliation: Waiver of liability
	22	Protection measures for persons concerned
	23	Penalties
IV. TRANSPARENCY AND ACCOUNTABILITY MEASURES	24	Transparency, participation and review
	25	Whistleblowing authority

ASSESSING AND RATING THE INDICATORS

Each indicator is divided into two parts:

- **“A. Compliance with the EU Directive”** assesses whether legislation complies fully (Y), complies partially (P), or does not comply (N) with the Directive.
- **“B. Assessment of the legislation against best practice”** assesses whether legislation can be considered STRONG, MODERATE or WEAK when compared to best practice.

As noted above, stakeholders from **EU countries** should conduct the assessment in two stages: firstly part A, followed by part B (noting that the results of the assessment of part A will in many cases feed into the assessment of part B). Stakeholders from countries **beyond the EU**, on the other hand, may choose to skip directly to part B.

Below is a sample indicator (Indicator 4), along with some guidance on how to assess the indicator against compliance with the EU Directive (A) and against best practice (B). **The full set of indicators is presented in Annex 1.**

A. Compliance with the EU Directive

No: Indicator Name:		Indicator Question:	
4 PERSONAL SCOPE: PROTECTED THIRD PARTIES		ARE RELEVANT THIRD PARTIES PROTECTED?	
A. COMPLIANCE WITH THE EU DIRECTIVE			Indicator Rating (Best practice) 
The legislation complies with EU Directive requirements if it extends protection to...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) facilitators (natural persons who assist a reporting person in the reporting process in a work-related context, and whose assistance should be confidential)	4.4(a) 5.8		Y
b) third persons who are connected with the reporting persons and who could suffer retaliation in a work-related context, such as colleagues and relatives	4.4(b)		Y
c) legal entities that the reporting persons own, work for or are otherwise connected with.	4.4(c)		N

Part A of the indicator enables the researcher to assess whether the national legislation complies fully (Y), partially (P), or not at all (N) with each of the criteria of the Directive. The relevant Articles (or Recitals) of the EU Directive to which each criterion relates is presented alongside it for ease of reference, along with some additional explanatory notes, where needed. Alongside each criterion (a, b, c, etc), the researcher should clearly mark the level of compliance (Y), (P) or (N) in the column “Complies with required criteria?”, as in the example above (in this case, one Y, one P and one N). The results for each indicator should then be presented graphically in the form of a pie chart, as in the example above. (Further guidance on visualising the results is presented in the section on “Presenting the results of the assessment” below.)

If the legislation fully complies with all the criteria for a given indicator it can be considered to fully meet the EU Directive requirements in that area. (This would be presented as a fully green pie chart.)

Note: The EU Directive is divided into 7 Chapters, which are further sub-divided into 29 Articles, and which form the core of what is required to be transposed into national legislation. The Chapters and Articles of the Directive are preceded by a set of 110 Recitals which provide additional information and guidance to support interpretation of the Articles⁴. There are some provisions in the Directive which can be considered “optional” insofar as the Directive indicates that Member States “may” include them in national legislation, or where the Directive states that the provision is to be applied

⁴ The full text of the Directive is available in all EU languages here: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

“in accordance with national law”. Such instances are identified under the indicators, as in the example below. In some cases, an explanatory note indicates whether compliance with this provision is recommended or not, in light of best practice. Compliance with the Directive will be achieved whether or not the national legislation meets the optional criteria. These optional criteria should thus not be included when rating the indicator in question (i.e. when developing the pie chart).

In addition, the legislation may (optionally) extend protection to ...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
d) civil society organisations providing advice to reporting persons which are bound by a duty to maintain the confidential nature of the information received.	Recital 89	<i>This is best practice and should be encouraged.</i>	N

B. Assessment of the legislation against best practice

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)
The legislation can be considered STRONG if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)
i) legal entities that the reporting persons own, work for or are otherwise connected with (i.e. criteria (c) above)		N
ii) third persons who are connected with the reporting persons and who could suffer retaliation, such as colleagues and relatives	<i>Protection should not be limited to retaliation “in a work-related context” but should include any form of retaliation, including outside a work-related context (i.e. this is wider than criterion (b) above).</i>	Y
iii) natural persons who assist or attempt to assist a reporting person		Y
iv) legal persons, including civil society organisations, who assist or attempt to assist a reporting person.		N
In addition, the legislation may be considered even stronger if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)
v) individuals who provide supporting information (that they have reasonable grounds to believe is true) regarding a report or disclosure.		N
Relevant sources: TI Principle 4; TI Best Practice Guide pp 11-14; TI Position Paper pp 5-6		
The legislation can be considered MODERATE if it...		
vi) meets two or three out of the four criteria (i) – (iv) above.		
The legislation can be considered WEAK if it...		
vii) meets one or none of the criteria (i) – (iv) above.		

Part B of the indicator enables the researcher to compare the legislation with best practice and provide an overall rating of STRONG (green), MODERATE (yellow) or WEAK (red) according to the extent to which it meets the relevant criteria. It should be noted that in some cases the criteria are similar or identical to those used to assess the EU Directive. However, in other cases they diverge, where the Directive itself is not considered to (fully) meet best practice. A list of sources from which the best practice is derived is included alongside the set of criteria for further reference, along with some additional explanatory notes, where needed.

In order to be assessed as STRONG, the legislation must fully meet **all** the criteria listed under that rating bracket (unless otherwise stated). If, on the other hand, the legislation only meets the criteria described under the MODERATE or WEAK rating brackets, then it should be rated accordingly. The results for each indicator should then be presented graphically in the form of a traffic light (as explained in the section on “Presenting the results of the assessment” below).

Note: In some cases, a piece of legislation may still be considered STRONG even if it does not meet all the criteria under the STRONG bracket. (This is because such criteria can be considered important but not essential and hence their absence alone would not preclude a rating of STRONG.) These additional criteria are identified under the indicators, as in the example below.

In addition, the legislation may be considered even stronger if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)
v) individuals who provide supporting information (that they have reasonable grounds to believe is true) regarding a report or disclosure.		N

DATA SOURCES AND VALIDATION

In most cases, it should be possible to conduct the assessment of indicators via a detailed line-by-line analysis of the content of published national whistleblower protection legislation, where it exists, or the text of proposed legislation, where it is still in the development stage. This requires an in-depth analysis of legislation in question, alongside a detailed reading of the indicator criteria and accompanying explanatory notes. Here, particular attention should be paid to the wording of legislation as small differences in language can have important legal implications. The indicators are designed in such a way as to draw attention to these nuances in order to ensure a thorough and sound assessment of the law.

As well as relying on the text of the whistleblower protection legislation, other sources may be useful, for example:

- **Secondary sources:** Researchers are encouraged to identify any previous research conducted on the strength of whistleblower protection legislation in the jurisdiction in question. This may provide some useful historical context and can also help the researcher more quickly identify those areas of weaknesses which require particular attention when going through the legislation line by line. While secondary sources can be useful, it is important that any such sources not be used as a substitute for a detailed analysis of the law.
- **Key informant interviews:** Interviews with legal experts can be particularly useful where whistleblower protection legislation is still in development or where it is spread across multiple pieces of legislation. In the former case, it can guide the researcher towards any areas of the law that are the subject of debate or controversy. In the latter case, it can help the researcher ensure that they have not left any gaps when mapping out the most relevant legal provisions on whistleblower protection to be covered by the assessment. In any case, legal experts may also be able to help researchers interpret any parts of the law which may be unclear. Crucially, any interviews should be carried out only once a thorough desk review of the legislation and the indicators has been conducted, in order to ensure that the interviews are targeted, and the time spent with interviewees is maximised.

Once the initial assessment is completed, it is also recommended to **validate the results** with legislators and/or legal experts in the respective jurisdiction. This could be done either through

a small meeting/workshop if there are multiple reviewers, or in writing if there are only one or two reviewers.

Such a process should be used to help identify any factual errors and to help clarify any remaining questions with regard to interpretation of the law. As far as possible, it is recommended to avoid entering into long discussions over the ratings for individual indicators, as this can be time consuming and distracting, although ratings can of course be changed if there is a factual basis to do so.

Validating the results with the legislators is an important advocacy opportunity and should be carefully planned. For instance, for assessments of existing legislation, the validation of results helps to build constructive relationships for future advocacy. For assessments of draft legislation, if the validation process is done early enough, policy makers may already address some of the highlighted weaknesses during the drafting phase, before the draft law is introduced in Parliament.

GLOSSARY OF KEY TERMS

The indicators largely adopt the language of the EU Directive in order to more easily ascertain the level of compliance with the Directive. Nevertheless, in some cases the language has been simplified or in other ways adjusted where this was deemed necessary to ensure clarity.

Below is a list of terms commonly used in the indicators accompanied by a simple definition/explanation of their meaning. (A more complete list of definitions of terms employed in the EU Directive is presented under Article 5 of the Directive.)

Whistleblowing: communicating information on breaches (see below) to individuals or entities believed to be able to effect action.

Breaches: unlawful or abusive acts or omissions (the wrongdoing that is the subject of the whistleblowing report or disclosure).

Reporting person: an individual who reports or publicly discloses information regarding a breach (i.e. the whistleblower).

Internal report: a whistleblowing report made within a public or private organisation (i.e. within the workplace).

External report: a whistleblowing report made to the competent authority(ies).

Public disclosure: making information on breaches available in the public domain, either by publishing the information, for example on online platforms and social media, or by reporting the information to stakeholders such as the media, elected officials, civil society organisations, legal associations, trade unions, or business/professional organisations.

Retaliation: any form of disadvantage, discrimination or unfair treatment linked with whistleblowing which can occur not only as a result of deliberate actions or omissions, but also through negligence in dealing with whistleblowing.

Follow-up: action taken by the recipient of a whistleblowing report, or any competent authority, to assess the accuracy of the allegations made and, where relevant, to address the breach

reported, including through actions such as an internal enquiry, an investigation, prosecution, an action for recovery of funds, or the closure of the procedure.

Competent authority: any national authority designated to receive and follow up on external reports.

Person concerned: a natural or legal person who is referred to in a whistleblowing report or disclosure as a person responsible for the breach or associated with the person responsible for the breach.

PRESENTING FINDINGS AND RECOMMENDATIONS

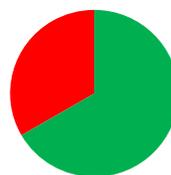
PRESENTING THE RESULTS OF THE ASSESSMENT

Once the assessment of each indicator is complete, the findings can be presented in visual form. As noted above, for Part A, the level of compliance with the EU Directive can be presented in the form of a pie chart for each indicator. As an example, if we imagine (hypothetically) an indicator for which three of five criteria are fully met, one is partially met and one is not met, this would translate into the visual presented below. It is important to remember when developing the pie chart for a given indicator that optional criteria (i.e. those which fall under the heading “the legislation may (optionally)...”) should not be included in the rating for that indicator.

For Part B, the findings can be presented in the form of a traffic light (red, yellow, green) according to the bracket into which the legislation falls, in this (hypothetical) case MODERATE. Once again, the optional criteria (i.e. those which fall under the heading “the legislation may be considered even stronger...”) should not be taken into consideration when rating that indicator.

4. PERSONAL SCOPE: PROTECTED THIRD PARTIES

A. Compliance with the EU Directive



- Complies fully (Y)
- Complies partially (P)
- Does not comply (N)

B. Assessment of legislation against best practice



- WEAK
- MODERATE**
- STRONG

While the optional criteria in both parts A and B are not included in the visual ratings, researchers are encouraged to highlight where these have been met (see further discussion under the section on “Assessing and rating the indicators” above). These cases can be highlighted in the form of a short narrative which should accompany the visual presentation of the results. This narrative should provide an overview of the main findings of the assessment (key strengths and weaknesses), as well as key recommendations for improvement (see section on “Developing recommendations” below).

Finally, as noted earlier, it is important to emphasise that while the indicators are assigned individual ratings, **these ratings must not be aggregated into overall ratings for the dimensions, nor for laws, nor for countries as a whole**, as different indicators may carry different weights in different contexts. (As a simple example, under Part A, Indicator 1 on “Material Scope” is more wide ranging (nine criteria) than indicator 2 on “Personal scope”, which only covers one criterion.) Instead, the aim is to identify where existing/proposed laws could be strengthened and how. Ratings allow a simple way to visualise the strengths and weaknesses of legislation but the temptation to use them as a basis for any kind of index should be resisted.

DEVELOPING RECOMMENDATIONS

Once all the indicators have been assessed and the key areas of strength and weakness of the legislation have been identified, the final step is to develop recommendations on how the legislation could be improved. Naturally, such recommendations are more likely to gain traction in cases where the legislation is still under development. Nonetheless, the process may still have value once the law has been passed, if for example the supporting institutional framework and/or supporting guidelines and regulations still need to be put in place, or if stakeholders want to advocate for reform of an existing piece of legislation. It may also be useful to monitor any amendments to the provisions of the whistleblower protection legislation in terms of whether they strengthen or weaken the law and make recommendations on that basis.

When developing recommendations, it is suggested that **stakeholders from EU countries** prioritise those areas which have been identified as largely non-compliant with the Directive. It is worth reiterating, however, that certain areas of the Directive – including both “required” and “optional” provisions – are not considered to meet best practice (these cases are identified under the respective indicators and further elaborated in Transparency International’s Position Paper on the EU Directive⁵). Therefore, compliance with the Directive in those areas should not be prioritised. Likewise, areas that are not compliant with the Directive but where the law is otherwise rated as being strong need not be prioritised. Finally, when considering compliance with the Directive, EU stakeholders may give added weight to the recommendations by emphasising the fact that the European Commission will itself conduct a conformity check to assess the compatibility of the national implementing measures with the Directive’s obligations. The Commission may take legal action – an infringement procedure – against an EU country that fails to comply with the Directive and refer the issue to the Court of Justice, which, in certain cases, can impose financial penalties⁶. This may help incentivise national authorities to take the recommendations seriously.

In the case of stakeholders from countries **beyond the EU**, it is recommended that recommendations prioritise those areas which have been identified as particularly weak vis-a-vis best practice (Part B).

In both cases (EU and non-EU), decisions on which areas to prioritise should also take into consideration the particular national and legislative context, in order to identify where changes are more crucial and where suggestions for amendments are more likely to be accepted given existing political realities, available resources etc.

⁵ Transparency International (2019) *Building on the EU Directive on Whistleblower protection*, Position Paper

⁶ More information on the infringement procedure can be found here: https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en

Formulating recommendations

The wording of the indicator criteria is a good starting point for the development of (alternative) legislative text, where this has been found to be missing or inadequate. This can be complemented by examining the wording presented in the EU Directive⁷ and Transparency International's Position Paper on the EU Directive, which provides recommendations to close loopholes and strengthen weaknesses in the Directive⁸, as well as Transparency International's 2018 *Best Practice Guide for Whistleblowing Legislation*, which provides examples of best practice from existing legislation around the world⁹.

For example, if we consider the (hypothetical) example of Indicator 4 above, where criteria (c) and (d) were assessed as not complying with the EU Directive, the following recommendation might be considered:

“Country X should extend whistleblower protection to legal entities that the reporting person owns or is otherwise connected with, as well as to civil society (and other) organisations which provide confidential advice to reporting persons. Indeed, protection should be extended to all individuals and entities at risk of retaliation as a consequence of whistleblowing.

Offering protection to legal entities that the reporting person owns or is otherwise connected with is important to ensure that individuals are able to report wrongdoing without, for example, putting their employer at risk (such as in the case of a supplier's employee reporting wrongdoing by the entity to which the company provides goods).

By providing advice and support to whistleblowers, and by helping them safely reveal wrongdoings, civil society organisations (CSOs) contribute to safeguarding the public interest. However, if not protected, CSOs are themselves exposed to retaliation and might be pressured to reveal a whistleblower's identity, weakening the entire system. Reporting persons should feel confident to seek external support without fear of putting third parties at risk or exposing themselves.”

As well as specific technical recommendations on the legislation itself, where appropriate, recommendations can also be provided on the broader policy and institutional framework around whistleblowing, such as for example, the roles and responsibilities of – and coordination between – different public bodies responsible for ensuring implementation of the law, the level of resources provided to supporting implementation of the law, the overall coherence of the legislative framework for whistleblowing and so on. However, it is important to recognise that this may require further research beyond what the present methodology can offer.

⁷ The full text of the Directive is available in all EU languages here: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

⁸ Transparency International (2019) *Building on the EU Directive on Whistleblower protection*, Position Paper

⁹ Transparency International (2018) *A Best Practice Guide for Whistleblowing Legislation*

ANNEX 1: FULL SET OF INDICATORS

I. SCOPE, DEFINITIONS, AND CONDITIONS FOR PROTECTION

No:		Indicator Name:		Indicator Question:	
1.		MATERIAL SCOPE: REPORTABLE INFORMATION		WHICH FORMS OF WRONGDOING ARE COVERED?	
A. COMPLIANCE WITH THE EU DIRECTIVE				Indicator Rating (Best practice)	
					
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes		Meets criteria? (Yes/No/Partially)
a)	defines “breaches” as acts or omissions that are unlawful or abusive (i.e. “defeat the object or the purpose” of the law)	5.1	<i>National law has to cover both unlawful and abusive behaviours to comply with the Directive.</i>		
b)	covers information, including reasonable suspicions, about actual or potential breaches which occurred or are very likely to occur in a work-related context	5.2	<i>Covers information on past, ongoing and “future” breaches and “reasonable suspicions” of breaches (no strong evidence/certainty required)</i>		
c)	covers information about attempts to conceal such breaches	5.2			

d)	covers breaches of EU law falling within the scope of the EU acts listed in the Annex of the Directive that concern the following areas: <ul style="list-style-type: none"> • public procurement • financial services, products and markets, and prevention of money laundering and terrorist financing • product safety and compliance • transport safety • protection of the environment • radiation protection and nuclear safety • food and feed safety, animal health and welfare • public health • consumer protection • protection of privacy and personal data, and security of network and information systems 	2.1(a)	<i>The Directive does not cover the entirety of the areas listed. It covers, within those areas, the scope of the EU acts listed in its Annex.</i>	
e)	covers breaches of EU law affecting the financial interests of the Union	2.1(b)		
f)	covers breaches of EU law relating to the internal market, including breaches of Union competition and State aid rules, as well as corporate tax rules	2.1(c)		
In addition, the legislation may (optionally)...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
g)	extend its scope of application beyond what is covered by criteria (d) - (f)	2.2	<i>This goes toward best practice and highly recommended. A broader and less fragmented scope than that described in criteria (d)-(f) above should be encouraged as a matter of priority (best practice is a “horizontal” approach as described in criterion B(v), below).</i>	
h)	exclude from its scope reports of breaches of the procurement rules involving defence or security aspects unless they are covered by the relevant acts of the Union	3.2	<i>This is not best practice, thus failure to comply need not be highlighted.</i>	

i) exclude from its scope information covered by: <ul style="list-style-type: none"> • the protection of classified information • the protection of legal and medical professional privilege • the secrecy of judicial deliberations • rules on criminal procedure. 	3.3	<i>This is not best practice, thus failure to comply need not be highlighted.</i>	
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B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) defines “breaches” as acts or omissions that are unlawful or abusive (i.e. criterion (a) above) or that threaten or harm the public interest	<p><i>Abuse of law are acts and omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law.</i></p> <p><i>All three categories of acts and omissions should be covered to meet the criterion (unlawful, abusive and threatening/harming the public interest).</i></p> <p><i>If national legislation provides for a list of types of breaches that would fall within the definition, it should be indicative/non-exhaustive.</i></p>	
ii) covers at least the following: <ul style="list-style-type: none"> • corruption • criminal offences • breaches of legal obligation • miscarriages of justice • specific dangers to public health, safety or the environment • human rights violations 		

<ul style="list-style-type: none"> • abuse of authority • unauthorised use of public funds, property or resources • gross waste or mismanagement • conflict of interest • fraudulent financial disclosures made by government agencies/officials and regulated corporations 		
iii) covers information on perceived or potential breaches that have been, are being or are likely to be committed	<i>Covers information on past, ongoing and “future” breaches and no strong evidence/certainty is required.</i>	
iv) covers information about concealment of breaches and attempts to conceal such breaches		
v) adopts a “horizontal” or cross-cutting/cross-sectoral approach (i.e. does not only apply to specific sectors, areas or domains)		
vi) does not exclude some categories of reportable information (such as matters of national security, official or military secrets, or classified information).	<i>The law can establish special procedures and safeguards for reporting information concerning such matters, via a body that is institutionally and operationally independent from the security sector or via authorities with the appropriate security clearance.</i>	
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
vii) limits the use of special schemes/rules (for example for information related to national security) to narrowly and clearly defined categories of information being disclosed and without consideration of the person making the disclosure.	<i>This means that a military officer raising a concern about irregularity in the procurement of office supplies should not be subject to a special whistleblowing scheme for information relating to national security but should be able to use the “general” scheme.</i>	

Relevant sources:

TI Principles 1, 3, 19 and 24; TI Best Practice Guide pp 7-10, 42-45 and 66; TI Position Paper pp 4-5

The legislation can be considered **MODERATE** if it...

viii) meets criteria (ii) – (iii) above, **AND**

ix) does not adopt a fully horizontal approach (i.e. does not meet criterion (v) above) **but** has nonetheless a significant and coherent range, covering many sectors/domains/areas.

The legislation can be considered **WEAK** if it...

x) does not meet at least criteria (viii) – (ix) above.

No:	Indicator Name:	Indicator Question:
2	PERSONAL SCOPE: PUBLIC AND PRIVATE SECTORS	DOES THE LEGISLATION COVER BOTH THE PUBLIC AND PRIVATE SECTORS?

A. COMPLIANCE WITH THE EU DIRECTIVE	Indicator Rating (Best practice)	
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The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) covers reporting persons in both the public and private sectors.	4.1		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) covers persons working in the public sector		
ii) covers persons working in the private sector.		

Relevant sources:
 TI Principles 1, 2, 4 and 24; TI Best Practice Guide pp 10-11 and 66

The legislation can be considered **MODERATE** if it...

iii) meets criteria (i) and (ii) above **but** with significant exceptions in the public sector such as the police and the military

iv) meets criteria (i) and (ii) above **but** only in some and not all areas of the private sector (such as the financial/banking sector).

The legislation can be considered **WEAK** if it...

v) only covers persons working in the public sector **or** persons working in the private sector, **but not both**

vi) covers persons working in the public sector **and** persons working in the private sector, **but** with significant exceptions/limitations in both cases (i.e. does not meet criteria (iii) or (iv) above).

No: Indicator Name:

Indicator Question:

3 PERSONAL SCOPE: DEFINITION OF A REPORTING PERSON

WHICH CATEGORIES OF INDIVIDUAL ARE PROTECTED?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) defines a 'reporting person' as a natural person who reports or publicly discloses information on breaches acquired in the context of thier work-related activities (irrespective of the nature of those activities)	5.7		
b) applies to at least the following categories of individuals: <ul style="list-style-type: none"> workers (whether full, part-time, fixed-term, temporary), including civil servants self-employed persons shareholders and persons belonging to the administrative, management or supervisory body volunteers and paid or unpaid trainees persons working under the supervision and direction of contractors, sub-contractors and suppliers 	4.1 Recital 38	<i>The EU Directive definition of a worker is quite broad (see Recital 38).</i>	
c) applies to reporting persons who acquired information in the context of past work activities ("in a work-based relationship which has since ended")	4.2 5.9		
d) applies to reporting persons who acquired information on breaches during the recruitment process or other pre-contractual negotiations.	4.3		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) defines a 'reporting person' as a natural person who reports or publicly discloses information on breaches acquired in the context of their work-related activities (i.e. criterion (a) above)	<p><i>"Work-related activities" should be interpreted widely to include, for example, an organisation's summer party.</i></p> <p><i>If national legislation provides for a list of categories of individuals that would fall within the definition, it should be indicative/non-exhaustive.</i></p>	
ii) applies to at least the following categories of individuals (i.e. criterion (b) above): <ul style="list-style-type: none"> • workers (whether full, part-time, fixed-term, temporary), including civil servants • self-employed persons • shareholders and persons belonging to the administrative, management or supervisory body • volunteers and paid or unpaid trainees • persons working under the supervision and direction of contractors, sub-contractors and suppliers 		
iii) covers past work-related activities (i.e. criterion (c) above)		
iv) covers persons who acquired information during the recruitment process or other pre-contractual negotiations (i.e. criterion (d) above)		
v) extends protection measures to persons who are believed or suspected to be a reporting person, even mistakenly, and who suffered retaliation		

vi)	does not exclude categories of workers such as police officers and members of the armed forces or intelligence services.		
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vii)	defines 'reporting person' as a natural person who reports or publicly discloses information on breaches, without any requirement that the individual must have acquired the information reported/disclosed in the context of their work-related activities		
viii)	extends protection measures to persons who are about to, or intend to, make a whistleblowing report or disclosure		
ix)	extends protection measures to persons who refuse to participate in breaches (without necessarily reporting them).		

Relevant sources:

TI Principles 4 and 11; TI Best Practice Guide pp 11-14 and 26-27; TI Position Paper pp 5-6

The legislation can be considered **MODERATE** if it...

x) meets at least criteria (i) – (iii) above.

The legislation can be considered **WEAK** if it...

xi) does not meet at least the criteria (i) – (iii) above.

No: Indicator Name:

Indicator Question:

4 PERSONAL SCOPE: PROTECTED THIRD PARTIES

ARE RELEVANT THIRD PARTIES PROTECTED?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating
(Best practice)



The legislation complies with EU Directive requirements if it extends protection to...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) facilitators (natural persons who assist a reporting person in the reporting process in a work-related context, and whose assistance should be confidential)	4.4(a) 5.8		
b) third persons who are connected with the reporting persons and who could suffer retaliation in a work-related context, such as colleagues and relatives	4.4(b)		
c) legal entities that the reporting persons own, work for or are otherwise connected with.	4.4(c)		
In addition, the legislation may (optionally) extend protection to ...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
d) civil society organisations providing advice to reporting persons which are bound by a duty to maintain the confidential nature of the information received.	Recital 89	<i>This is best practice and should be encouraged.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)
i) legal entities that the reporting persons own, work for or are otherwise connected with (i.e. criteria (c) above)		
ii) third persons who are connected with the reporting persons and who could suffer retaliation, such as colleagues and relatives	<i>Protection should not be limited to retaliation "in a work-related context" but should include any form of retaliation, including outside a work-related context (i.e. this is wider than criterion (b) above).</i>	
iii) natural persons who assist or attempt to assist a reporting person		
iv) legal persons, including civil society organisations, who assist or attempt to assist a reporting person.		
In addition, the legislation may be considered even stronger if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)
v) individuals who provide supporting information (that they have reasonable grounds to believe is true) regarding a report or disclosure.		

Relevant sources:

TI Principle 4; TI Best Practice Guide pp 11-14; TI Position Paper pp 5-6

The legislation can be considered **MODERATE** if it...

vi) meets two or three out of the four criteria (i) – (iv) above.

The legislation can be considered **WEAK** if it...

vii) meets one or none of the criteria (i) – (iv) above.

No:	Indicator Name:	Indicator Question:
5	CONDITIONS AND THRESHOLDS FOR PROTECTION	WHICH ARE THE CONDITIONS AND THRESHOLDS FOR PROTECTION OF REPORTING PERSONS?

A. COMPLIANCE WITH THE EU DIRECTIVE	Indicator Rating (Best practice)	
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The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) establishes that reporting persons qualify for protection where the following 2 conditions are met: <ul style="list-style-type: none"> • they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting • they reported in accordance with the conditions set-out for internal reporting, external reporting, public disclosure, as relevant 	6.1 Recital 32	<i>If the legislation requires additional conditions to be met, it does not comply with the Directive. In particular, the motives for reporting should be irrelevant in deciding whether the reporting person should receive protection.</i>	
b) specifies that persons who reported or publicly disclosed information on breaches anonymously, and are subsequently identified and suffer retaliation, qualify for protection.	6.3	<i>This is regardless of whether or not the law requires anonymous reports to be accepted and followed up on.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) where they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting	<i>Reporting persons should qualify for protection regardless of whether any subsequent investigation finds proof of wrongdoing.</i>	

ii)	even where they reported or publicly disclosed information anonymously (i.e. criterion (b) above)		
iii)	without consideration of the reporting person's motives for reporting (this should be irrelevant in deciding whether they should receive protection)		
iv)	without limiting such protection to reports made "in the public interest".		
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
v)	stipulates that protection extends to reporting persons who report or disclosure inaccurate information in honest error.	<i>It is often considered as implied, but a clear stipulation is preferable to minimise risks of misinterpretation.</i>	

Relevant sources:

TI Principle 5; TI Best Practice Guide pp 9-10 and 14-16

The legislation can be considered **MODERATE** if it...

vi) meets criteria (i) – (iv) above **but** includes additional conditions for qualifying for protection further to those mentioned above.

The legislation can be considered **WEAK** if it...

vii) does not meet criteria (i) – (iv) above

II. REPORTING CHANNELS AND PROCEDURES

No: 6		Indicator Name: MULTIPLE REPORTING AVENUES		Indicator Question: TO WHAT EXTENT DOES THE LEGISLATION FORESEE MULTIPLE REPORTING AVENUES (FOR INTERNAL, EXTERNAL AND PUBLIC REPORTING)?		
A. COMPLIANCE WITH THE EU DIRECTIVE				Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...				Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) provides for reporting within the workplace (internal reporting)				8		
b) provides for reporting to designated competent authorities (external reporting)				11		
c) provides for public disclosures				15		
d) allows reporting persons to report directly externally to the designated competent authorities (i.e. does not impose any additional conditions for external reporting)				10		
e) encourages reporting through internal reporting channels first where the breach can be addressed effectively internally and where the reporting person considers that there is no risk of retaliation.				7.2		



B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) provides for reporting within the workplace (internal reporting) (i.e. criterion (a) above)		
ii) provides for reporting to designated competent authorities (external reporting) (i.e. criterion (b) above)		
iii) provides for public disclosures (i.e. criterion (c) above)		
iv) allows reporting persons to report directly externally to the designated competent authorities (i.e. does not impose any additional conditions for external reporting) (i.e. criterion (d) above).		

Relevant sources:

TI Principles 15, 16 and 17; TI Best Practice Guide pp 31 and 37-38; TI Position Paper p2

The legislation can be considered **MODERATE** if it...

- v) meets criteria (i) – (iii) above; **BUT**
- vi) requires that reporting persons first report through internal channels before using external channels or make a public disclosure **OR**
- vii) “encourages” reporting through internal channels first in a way that limits in effect access to external reporting and/or further limits public disclosures.

The legislation can be considered **WEAK** if it...

viii) does not meet all three criteria (i) – (iii) above.

No: Indicator Name:

Indicator Question:

7 OBLIGATIONS FOR PUBLIC AND PRIVATE ENTITIES

TO WHAT EXTENT DOES THE LEGISLATION PLACE OBLIGATIONS ON PUBLIC AND PRIVATE ENTITIES?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) requires all public entities to establish channels and procedures for internal reporting and for follow-up (internal reporting mechanisms)	8.1 8.9	<ul style="list-style-type: none"> • <i>Municipalities with fewer than 10,000 inhabitants or fewer than 50 workers, or public sector entities with fewer than 50 workers can be exempt.</i> • <i>Municipalities can be allowed to share internal reporting channels.</i> 	
b) requires private entities with 50 or more workers to establish internal reporting mechanisms	8.3 8.4 8.6	<ul style="list-style-type: none"> • <i>This threshold does not apply to private sector entities that are obliged to establish internal reporting channels by virtue of other Union acts (referred to in Parts I.B and II of the Directive's Annex).</i> • <i>Private sector entities with 50 to 249 workers may share resources.</i> 	
c) requires the public and private entities mentioned in criteria (a) and (b) above to follow-up on internal reports received (i.e. to assess the accuracy)	8.1 9.1(d) 5.12		

of the allegations made in the report and, where relevant, to address the breach reported).			
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
d) require internal reporting mechanisms to be established following consultation and in agreement with the social partners	8.1	<i>This is best practice and should be encouraged.</i>	
e) require (some) private entities with fewer than 50 workers to establish internal reporting mechanisms	8.7 Recital 48	<i>This is best practice and should be encouraged.</i>	
f) allow internal reporting channels to be operated internally or externally by a third party	8.5		
g) ensure that internal reporting mechanisms enable not only the entities' workers to report information on breaches but also other persons who are in contact with the entity in the context of their work-related activities (those referred to in article 4.1(b), 4.1(c), 4.1(d) and 4.2, i.e. the self-employed, shareholders, volunteers, trainees, those working under the direction of contractors, etc.).	8.2	<i>This is best practice and should be encouraged.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) requires all public entities, at local, regional and national level, without exception and regardless of size, to establish internal reporting mechanisms	<i>Some public entities can be allowed to share internal reporting channels.</i>	
ii) requires all private entities with 50 or more employees to establish internal reporting mechanisms (i.e. criterion (b) above)		
iii) requires the public and private entities mentioned in criteria (i) and (ii) above to follow-up on internal reports received (i.e. to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported).		

iv)	requires all public and private entities to protect reporting persons and protected third parties (i.e. requires the employer to try to prevent and to address detriment to the reporting persons).		
v)	provides minimum standards to be met by internal reporting mechanisms	<i>The law can refer to a mandatory regulation if it is more appropriate in the national context to have such minimum standards in a regulation.</i>	
vi)	requires internal reporting mechanisms to be established following consultation and in agreement with relevant stakeholders, including the social partners		
vii)	ensures that internal reporting mechanisms enable all relevant individuals to report information on breaches, and at least those covered by the legislation personal scope (consultants, former employees, job applicants, etc.)	<i>Internal reporting mechanisms should not be only designed for an entity's employees.</i>	
viii)	provides for effective, proportionate and dissuasive penalties for failure to fulfil the obligation to implement internal reporting mechanisms within a given time period.	<i>Penalties should also apply for failure to have regard to meet the minimum standards provided in the law or regulation (see indicators 8&9 below).</i>	
ix)	provides for effective, proportionate and dissuasive penalties for failure to follow up on reports		
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
x)	provides for effective, proportionate and dissuasive penalties for failure to protect a reporting person		
Relevant sources: TI Principle 15; TI Best Practice Guide pp 32-33, 36 and 45-47; TI Position Paper pp 9-10			

The legislation can be considered **MODERATE** if it...

- xi) meets at least criteria (i) - (iv) above **but** exempts more entities from the obligation to establish such mechanisms (e.g. exempts certain sectors or entities with a significantly larger number of employees than 50 or small municipalities); **OR**
- xii) fully meets criteria (i) - (iii) above **but** does not meet criteria (iv).

The legislation can be considered **WEAK** if it...

- xiii) does not meet at least criteria (i) - (iii) above; **OR**
- xiv) does not meet criteria (xi) above.

No: Indicator Name:

Indicator Question:

8 INTERNAL REPORTING AND FOLLOW-UP: PROCEDURES

TO WHAT EXTENT ARE THE PROCEDURES FOR INTERNAL REPORTING AND FOLLOW-UP DEFINED IN THE LEGISLATION?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it requires public and private entities to adopt internal reporting mechanisms that...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) ensure the confidentiality of the identity of the person reporting internally and any third party mentioned in the report, and prevents access to that information by non-authorized staff	9.1(a)		
b) provide reporting channels (plural) that enable reporting in writing (e.g. by post, by physical complaint box, through an online platform) and/or orally (i.e. by telephone or through other voice messaging systems, and by means of a physical meeting within a reasonable timeframe)	9.1(a) 9.2. Recital 53		
c) designate an impartial person/department to follow up on reports and to maintain communication with the reporting person, including to ask for further information where necessary and to provide feedback	9.1.(c)	<i>This person or department can be the same as the one receiving the reports.</i>	
d) ensure diligent follow-up of reports (by said impartial person or department)	9.1(d)		
e) keep records of every report received, in compliance with confidentiality requirements	18.1		
f) ensure that reports, wherever they are received, are stored for no longer than it is necessary and proportionate	18.1		
g) grant organisations the right to document oral reporting and meetings via recording, transcript or minutes, subject to the consent of the reporting person	18.2 18.3 18.4		

h) offer the reporting person the opportunity to review, rectify and agree to the transcripts/minutes of oral reporting and meetings (mentioned in criterion (g) above).	18.2 18.3 18.4		
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
i) require follow-up of anonymous reports.	9.1(e)	<i>This is best practice and should be encouraged.</i>	
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it requires public and private entities to adopt internal reporting mechanisms that...		Explanatory notes	Meets criteria? (Yes/No)
i) ensure the confidentiality of the identity of the reporting person (unless explicitly waived by the reporting person) (i.e. criterion (a) above)			
ii) provide multiple reporting channels that are easily accessible and enable reporting in writing and orally			
iii) designate impartial person(s)/department for handling reports, in particular for: <ul style="list-style-type: none"> • providing any interested person with information on the procedures for reporting • receiving reports • following up on reports • maintaining communication with the reporting person, including to ask for further information where necessary and to provide feedback 			
iv) ensure diligent (i.e. thorough, timely and independent) follow-up of reports (i.e. criterion (d) above)			
v) provide enforceable mechanisms to receive and follow up on reporting persons' retaliation complaints in a transparent and timely manner			
vi) provide a process for disciplining perpetrators of retaliation			

vii)	provide enforceable mechanisms to ensure full reparation for the reporting persons who have suffered retaliation (i.e. for providing remedial measures and compensation) in a transparent and timely manner		
viii)	require follow-up of anonymous reports (i.e. criterion (i) in part A above)		
ix)	provide reporting channel(s) that enable anonymous reporting (e.g. through an online reporting platform).		
In addition, the legislation may be considered even stronger if it requires public and private entities to adopt internal reporting mechanisms that...		Explanatory notes	Meets criteria? (Yes/No)
x)	ensure that designated staff have the relevant qualifications and/or receive specific training for the purpose of handling reports		
xi)	provide for additional strategies to prevent retaliation against reporting persons (e.g. risk assessment, preventive measures)		
xii)	provide or refer to safe and confidential advice channels		
xiii)	provide for reporting channels that enable communication between anonymous reporting persons and persons handling their report.		
xiv)	provide for appeals regarding the fairness and quality of the process in a case at the request of the whistleblower or the person concerned.		
Relevant sources: TI Principles 15 and 18; TI Best Practice Guide pp 34-37; TI Position Paper pp 8-10			

The legislation can be considered **MODERATE** if it...

xv) meets all five criteria (i) – (v) above

The legislation can be considered **WEAK** if it...

xvi) does not meet at least the five criteria (i) – (v) above.

No: Indicator Name:

Indicator Question:

9 INTERNAL REPORTING AND FOLLOW-UP: INFORMATION AND COMMUNICATION

TO WHAT EXTENT ARE THE INFORMATION AND COMMUNICATION REQUIREMENTS FOR INTERNAL REPORTING MECHANISMS DEFINED IN THE LEGISLATION?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) requires the provision of appropriate information relating to the use of internal reporting channels	7.3		
b) requires the provision of clear and easily accessible information regarding the procedures for reporting externally to competent national authorities and, where relevant, to EU institutions, bodies, offices or agencies	9.1(g)		
c) requires the acknowledgement of receipt of the report within seven days (or less) of its receipt	9.1(b)		
d) requires the provision feedback to reporting persons within three months on the action envisaged or taken as follow-up to the report and the grounds for the choice of that follow-up.	5.13 9.1(f)		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) ensures that regulations and procedures for internal reporting are highly visible and understandable (e.g. regularly promoted, sign-posted in the workplace, both physically and electronically)		
ii) requires the provision of clear and easily accessible information regarding the procedures for reporting externally to competent authorities (i.e. criterion (b) above)		
iii) requires the acknowledgement of receipt of the report within a strict, short time frame of receipt	<i>The seven-day timeframe foreseen in criterion (c) above can be considered too long in some contexts.</i>	
iv) requires the timely provision of feedback to reporting persons on the action envisaged or taken as follow-up to the report and the grounds for the choice of that follow-up	<i>The three-month timeframe foreseen in criterion (d) above can be considered too long in some contexts.</i>	
v) provides reporting persons with the opportunity to clarify their report and provide additional information or evidence (albeit without the obligation for them to do so)		
vi) allows reporting persons to review and comment on the results of the follow-up on their report (e.g. on the draft investigation report)		
vii) requires the publication of annual reports recording the numbers of reports received, steps taken to follow up and outcome.		

In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
viii) provides for effective, proportionate and dissuasive penalties for failure to provide feedback on the follow-up to the reporting person within a reasonable timeframe		
ix) requires comprehensive internal training to management and staff on reporting of breaches.		

Relevant sources:

TI Principles 15, 18, 22 and 27; TI Best Practice Guide pp 33, 47-49; TI Position Paper p10

The legislation can be considered **MODERATE** if it...

(x) meets at least criteria (i) - (iv) above

The legislation can be considered **WEAK** if it...

(xi) does not meet at least criteria (i) - (iv) above (regardless of whether criteria (v) - (vii) are met).

No: Indicator Name:

Indicator Question:

10 ESTABLISHING EXTERNAL REPORTING MECHANISMS

TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH EXTERNAL REPORTING CHANNELS AND OBLIGATIONS TO FOLLOW UP ON REPORTS?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it ...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) clearly designates authorities competent to receive, give feedback and follow up on external reports	11.1 5.14	<i>This might be done via regulation, but the law should clearly state who is responsible for designating the authorities and include comprehensive criteria for such designation.</i>	
b) requires such authorities to establish independent and autonomous channels for external reporting	11.2(a)		
c) requires such authorities to diligently follow up on reports	11.2 (c) Recital 65	<i>To be able to diligently follow up on reports, the designated authority should already have or be given the necessary capacities and powers to do so (either by investigating and addressing the breaches reported through remedial action itself or by referring the report to another authority and ensure that there is appropriate follow-up by such authority).</i>	
d) provides such authorities with adequate resources	11.1	<i>This is an essential aspect, but it is acknowledged that it will likely not be</i>	

		<i>addressed (solely) in the whistleblower legislation itself.</i>	
e) requires any authority which has received a report but does not have the competence to address the breach reported, to transmit it to the competent authority, within a reasonable time and in a secure manner, and to inform the reporting person without delay	11.6		
f) requires that the competent authority transmits the information contained in a report in due time to competent institutions, bodies, offices or agencies of the EU, as appropriate, for further investigation, where provided for by law	11.2(f)		
g) requires competent authorities to review their procedures for receiving reports, and their follow-up, regularly, and at least once every three years.	14		
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
h) provide that competent authorities can decide that a reported breach does not require further follow-up if it is clearly minor or repetitive, as long as they inform the reporting person of such a decision and the reasons for it	11.3 11.4	<i>This is not best practice, thus failure to comply need not be highlighted.</i>	
i) provide that competent authorities may deal with reports of serious breaches or breaches of essential provisions falling within the scope of the Directive as a matter of priority.	11.5		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i)	clearly designates authorities competent to receive, give feedback and follow up on external reports (i.e. criterion (a) above)		
ii)	requires such authorities to establish independent and autonomous channels for external reporting (i.e. criterion (b) above)		
iii)	requires such authorities to diligently follow up on reports (i.e. criterion (c) above)	<i>To be able to diligently follow up on reports, the designated authority should already have or be given the necessary capacities and powers to do so (either by investigating and addressing the breaches reported through remedial action itself <u>or</u> by referring the report to another authority and ensure that there is appropriate follow-up by such authority).</i>	
iv)	requires any authority which has received a report, but does not have the competence to address the breach reported, to facilitate transmission of the report to the correct responsible authority, but not without the explicit consent of the reporting person (for example they can inform, where possible, the reporting person and either get their explicit consent before transmitting their report to the correct responsible authority or direct them to the correct responsible authority)	<i>This differs from criterion (e) above in that it requires the reporting person to give their consent for the report to be forwarded, where possible.</i>	
v)	provides minimum standards to be met by such external reporting mechanisms	<i>The law can refer to a mandatory regulation if it is more appropriate in the national context to have such minimum standards in a regulation.</i>	

vi) provides for effective, proportionate and dissuasive penalties for failure to fulfil the obligation to implement external reporting mechanisms within a given time period.	<i>Penalties should also apply for failure to have regard to meet the minimum standards provided in the law or regulation (see indicators 11 and 12 below).</i>	
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
vii) states that designated authorities should be provided with adequate resources	<i>This is an essential aspect, but it is acknowledged that it will likely not be addressed (solely) in the whistleblower legislation itself.</i>	
viii) requires competent authorities to review their procedures for receiving reports, and their follow-up, regularly, and at least once every three years (i.e. criterion (g) above).		

Relevant sources:

TI Principles 16 and 30; TI Best Practice Guide pp 37-39 and 45-47; TI Position Paper p 10

The legislation can be considered **MODERATE** if it...

ix) meets at least criteria (i) - (iii).

The legislation can be considered **WEAK** if it...

x) does not meet at least criteria (i) - (iii), regardless of whether the other criteria are met.

No: Indicator Name:

Indicator Question:

11 EXTERNAL REPORTING AND FOLLOW-UP: PROCEDURES TO WHAT EXTENT ARE THE PROCEDURES FOR EXTERNAL REPORTING AND FOLLOW-UP DEFINED IN THE LEGISLATION?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it requires external reporting channels and procedures to...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) ensure the completeness, integrity and confidentiality of the information and prevent access by non-authorized staff members of the competent authority	12.1(a)		
b) guarantee the durable storage of information to allow further investigations to be carried out	12.1(b)		
c) enable reporting in writing and orally (by telephone or through other voice messaging systems and by means of a physical meeting within a reasonable timeframe)	12.2		
d) ensure diligent follow-up on the report	11.2(c)		
e) designate staff members (plural) responsible for handling reports, in particular for: <ul style="list-style-type: none"> • providing any interested person with information on the procedures for reporting • receiving and following up on reports • maintaining contact with the reporting person for the purpose of providing feedback and requesting further information where necessary 	12.4	<i>The EU Directive does not require that the same person perform all three tasks.</i>	
f) ensure that designated staff receive specific training for the purpose of handling reports	12.5		

g)	ensure that where a report is received through other channels or by other staff members, they are prohibited from disclosing any identifying information	12.3		
h)	ensure that where a report is received through other channels or by other staff members, they promptly forward the report to the staff members responsible for handling reports	12.3	<i>Although it is a requirement under the EU Directive, forwarding a report without the express prior consent of the reporting person is not best practice (see criterion (x) below).</i>	
i)	keep records of every report received, in compliance with confidentiality requirements	18.1		
j)	ensure that reports, wherever they are received, are stored for no longer than it is necessary and proportionate	18.1		
k)	empower competent authorities to document oral reporting and meetings via recording, transcript or minutes, subject to the consent of the reporting person	18.2 18.3 18.4		
l)	offer the reporting person the opportunity to review, rectify and agree the above-mentioned transcripts/minutes of oral reporting and meetings.	18.2 18.3 18.4		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it requires external reporting channels and procedures to...		Explanatory notes	Meets criteria? (Yes/No)
i)	ensure the completeness, integrity and confidentiality (including of the identity of the reporting person) of the information and prevent access by non-authorized staff members of the competent authority (i.e. criterion (a) above)		
ii)	provide multiple reporting channels that are easily accessible and enable reporting in writing and orally		

iii)	ensure diligent (i.e. thorough, timely and independent) follow-up on the report (i.e. criterion (d) above)		
iv)	designate staff members (plural) responsible for handling reports, in particular for: <ul style="list-style-type: none"> • providing any interested person with information on the procedures for reporting • receiving and following up on reports • maintaining contact with the reporting person for the purpose of providing feedback and requesting further information where necessary (i.e. criterion (e) above)		
v)	ensure that designated staff have the relevant qualifications and receive specific training for the purpose of handling reports		
vi)	ensure that where a report is received through other channels or by other staff, they are prohibited from disclosing any identifying information (i.e. criterion (g) above).		
vii)	require follow-up of anonymous reports		
viii)	provide reporting channel(s) that enable anonymous reporting (e.g. through online reporting platform).		
ix)	guarantee the durable storage of information (i.e. criterion (b) above)		
In addition, the legislation may be considered even stronger if it requires external reporting channels and procedures to...		Explanatory notes	Meets criteria? (Yes/No)
x)	ensures that where a report is received through other channels or by other staff members, the recipient should direct the reporting person to the correct channel or authority	<i>This differs from criterion (h) above in that it requires the recipient to direct the reporting person to the appropriate channel rather than forwarding their report without their consent.</i>	
xi)	provides for reporting channels that enable communication between anonymous reporting persons and persons handling their report.		

Relevant sources:

TI Position Paper p 10

The legislation can be considered **MODERATE** if it...

xii) meets at least criteria (i) - (iv).

The legislation can be considered **WEAK** if it...

xiii) does not meet at least criteria (i) - (iv).

No:	Indicator Name:	Indicator Question:
12	EXTERNAL REPORTING AND FOLLOW-UP: INFORMATION AND COMMUNICATION	TO WHAT EXTENT ARE THE INFORMATION AND COMMUNICATION REQUIREMENTS FOR EXTERNAL REPORTING MECHANISMS DEFINED IN THE LEGISLATION?

A. COMPLIANCE WITH THE EU DIRECTIVE	Indicator Rating (Best practice)	
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The legislation complies with EU Directive requirements if it requires competent authorities to...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) publish on their websites at least the following information: <ul style="list-style-type: none"> the conditions for qualifying for protection the contact details for the external reporting channels the procedures applicable to the reporting of breaches, including regarding request for clarification/further information and feedback to the reporting person the confidentiality regime the nature of the follow-up to be given the remedies and procedures for protection against retaliation and the availability of confidential advice the conditions under which persons reporting to the competent authorities are protected from incurring liability for a breach of confidentiality contact details of the information centre or of the single independent administrative authority 	13		
b) publish the above information in a separate, easily identifiable and accessible section of their websites	13		
c) acknowledge receipt of information on breaches within seven days (unless the reporting person explicitly requested otherwise, or the competent authority reasonably believes that acknowledging receipt of the report would jeopardise the protection of the reporting person's identity)	11.2(b)		

d)	provide feedback to the reporting person within a reasonable timeframe not exceeding three months (or six months in duly justified cases)	11.2(d)		
e)	communicate the final outcome of investigations to the reporting person (in accordance with procedures provided for under national law).	11.2(e)		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it requires competent authorities to...	Explanatory notes	Meets criteria? (Yes/No)
i) publish on their websites at least the following information (i.e. criterion (a) above): <ul style="list-style-type: none"> • the conditions for qualifying for protection • the contact details for the external reporting channels • the procedures applicable to the reporting of breaches, including regarding request for clarification/further information and feedback to the reporting person • the confidentiality regime • the nature of the follow-up to be given • the remedies and procedures for protection against retaliation and the availability of confidential advice • the conditions under which persons reporting to the competent authorities are protected from incurring liability for a breach of confidentiality • contact details of the information centre or of the single independent administrative authority 		
ii) publish the above information in a separate, easily identifiable and accessible section of their websites (i.e. criterion (b) above)		
iii) provide for the acknowledgement of receipt of the report within a strict, short time frame of receipt	<i>The seven-day timeframe foreseen in criterion (c) above can be considered too long in some contexts.</i>	
iv) provide timely feedback to the reporting persons on the action envisaged or taken as follow-up to the report and the grounds for the choice of that follow-up	<i>The three to six-month timeframe foreseen in criterion (d) above can be</i>	

	<i>considered too long in some contexts.</i>	
v) communicate the findings and final outcome of investigations to the reporting person	<i>Communication can be limited due to legal requirements, such as criminal procedure rules and privacy laws. This is ok insofar as these limitations are necessary and proportionate, and the whistleblower is notified of the reasons of the limited communication.</i>	
vi) provide reporting persons with the opportunity to clarify their report and provide additional information or evidence (albeit without the obligation for them to do so)		
vii) provide reporting persons with the opportunity to review and comment on the results of the follow-up on their report (e.g. on the draft investigation report)		
viii) foresee annual reports recording the numbers of report received, steps taken to follow up and outcome.		
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
ix) provides for effective, proportionate and dissuasive penalties for failure to provide feedback on the follow-up to the reporting person within a reasonable timeframe.		
x) provides for penalties for failure to ensure that information on reporting is published and easily accessible.		
Relevant sources: TI Principles 22; TI Best Practice Guide pp 47-49; TI Position Paper p 10		

The legislation can be considered **MODERATE** if it...

x) meets criteria (iii) – (v) above; **AND**

xi) partially or fully meets criteria (i) above (i.e. requires competent authorities to publish at least part of the information listed in criteria (i) above).

The legislation can be considered **WEAK** if it...

xii) does not meet criteria (x) and (xi) above.

No: Indicator Name:

Indicator Question:

13 PUBLIC DISCLOSURES

TO WHAT EXTENT ARE PUBLIC DISCLOSURES PROTECTED?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating
(Best practice)



The legislation complies with EU Directive requirements if it protects a person who makes public disclosures where...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) the person first reported internally and externally, or directly externally but no appropriate action was taken	15.1(a)		
b) the person has reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public interest, or a risk of irreversible damage, including harm to a person's physical integrity	15.1(b)(i)		
c) in the case of external reporting, the person has reasonable grounds to believe that there is a risk of retaliation or there is a low prospect of the breach being effectively addressed due to the particular circumstances of the case (such as those where evidence may be concealed or destroyed or where an authority may be in collusion with the perpetrator of the breach or involved in the breach).	15.1(b)(ii)		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it protects a person who makes public disclosures where...	Explanatory notes	Meets criteria? (Yes/No)
i) the person first reported internally and externally, or directly externally but no appropriate action was taken (i.e. criterion (a) above)		
i) the person has reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public interest, or a risk of irreversible damage, including harm to a person's physical integrity (i.e. criterion (b) above)		
iii) in the case of external reporting, there is a risk of retaliation or there is a low prospect of the breach being effectively addressed due to the particular circumstances of the case (i.e. criterion (c) above).		

Relevant sources:

TI Principle 17; TI Best Practice Guide pp 40-41

The legislation can be considered **MODERATE** if it...

iv) meets both criteria (i) and (ii) above **but** not criterion (iii).

The legislation can be considered **WEAK** if it...

v) does not meet both criteria (i) and (ii) above.

III. PROTECTION MEASURES

No: 14		Indicator Name: DUTY OF CONFIDENTIALITY		Indicator Question: TO WHAT EXTENT DOES THE LEGISLATION GUARANTEE THE CONFIDENTIALITY OF A REPORTING PERSON'S IDENTITY?	
A. COMPLIANCE WITH THE EU DIRECTIVE				Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)	
a)	ensures that the identity of the reporting person cannot be disclosed to anyone beyond the authorised staff members competent to receive or follow up on reports, without the explicit consent of that person	16.1			
b)	ensures that criterion (a) also applies to any other information from which the identity of the reporting person may be directly or indirectly deduced	16.1			
c)	<p>only allows the identity of the reporting person to be disclosed where</p> <ul style="list-style-type: none"> • this is a necessary and proportionate obligation... • imposed by Union or national law... • in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned... • subject to appropriate safeguards <p><i>(The above sentence has been broken down into bullet points to emphasise the various elements of the derogation.)</i></p>	16.2 16.3			



d)	requires that where their identity is to be disclosed, the reporting person shall be informed beforehand (an explanation sent in writing), unless such information would jeopardise the related investigations or judicial proceedings	16.3		
e)	ensures that competent authorities that receive information on breaches that include trade secrets do not use or disclose those trade secrets for purposes going beyond what is necessary for proper follow-up	16.4		
f)	provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons that breach the duty of maintaining the confidentiality of the identity of reporting persons.	23.1(d)		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) ensures that the identity of the reporting person cannot be disclosed beyond those persons competent to receive or follow up on reports, without the explicit consent of that person (i.e. criterion (a) above)		
ii) stipulates that criterion (i) also applies to any other information from which the identity of the reporting person may be directly or indirectly deduced (i.e. any identifying information) (i.e. criterion (b) above)		
iii) clearly and narrowly defines the very few exceptions to confidentiality. The identity of the reporting person may only be disclosed where there is a legal obligation to do so, and such obligation should be confined to the context of investigations by national authorities or judicial proceedings and should be necessary and proportionate , including with the view to safeguard the rights of defence of the person concerned		
iv) stipulates that when identifying information must be disclosed, reporting persons should be informed beforehand (an explanation sent in writing), with sufficient notice		

v) provides for effective, proportionate and dissuasive penalties for breaching the duty of maintaining the confidentiality of the identity of reporting persons (i.e. criterion (f) above).		
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
vi) stipulates that when identifying information must be disclosed, reporting persons should be provided with additional protection measures where appropriate		
vii) provides the reporting person with the possibility to appeal the decision to disclose their identity.		

Relevant sources:

TI Principle 7; TI Best Practice Guide pp 18-20

The legislation can be considered **MODERATE** if it...

N/A. Given the critical importance of maintaining strict confidentiality, any gaps in the confidentiality regime may significantly weaken the whistleblower protection legislation and hence the option of giving a rating of MODERATE for this indicator is excluded.

The legislation can be considered **WEAK** if it...

viii) does not meet all criteria (i) - (v) above.

No: Indicator Name:

Indicator Question:

15 DATA PROTECTION

TO WHAT EXTENT DOES THE LEGISLATION GUARANTEE THE PROTECTION OF PERSONAL DATA WHEN PROCESSING REPORTS?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating
(Best practice)



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) requires processing of personal data, including the exchange or transmission of personal data to be carried out in accordance with relevant EU legislation	17	<i>Relevant EU legislation includes Regulation (EU) 2016/679, Directive (EU) 2016/680 and Regulation (EU) 2018/1725.</i>	
b) prohibits the collection of personal data which are manifestly not relevant for the handling of a specific report (or if collected, requires it to be deleted without undue delay).	17		
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
c) restrict the exercise of certain data protection rights of persons concerned to prevent and address attempts to find out the identity of the reporting persons or attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations.	Recital 84	<i>This is best practice and should be encouraged.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) clearly articulates the relationship between the whistleblower protection legislation and data protection rules in a way that allows the effective implementation of the whistleblower protection legislation		
ii) restricts the exercise of certain data protection rights of persons concerned to prevent and address attempts to find out the identity of the reporting persons or attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations (i.e. criterion (c) above).		

Relevant sources:

The legislation can be considered **MODERATE** if it...

iii) meets one of criteria (i) - (ii).

The legislation can be considered **WEAK** if it...

iv) meets none of criteria (i) or (ii).

No: Indicator Name:

Indicator Question:

16 ANONYMITY

TO WHAT EXTENT DOES THE LEGISLATION REQUIRE ANONYMOUS REPORTS TO BE ACCEPTED AND PROTECTED?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating
(Best practice)



The legislation **complies with EU Directive** requirements if it...

Relevant Article(s)

Explanatory notes

Meets criteria?
(Yes/No/Partially)

a) establishes that persons who report or publicly disclose information on breaches anonymously, and are subsequently identified and suffer retaliation, qualify for protection.

6.3.

This is regardless of whether the law requires private and public entities and competent authorities to accept and follow up on anonymous reports (which is at the discretion of each Member State).

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered **STRONG** if it...

Explanatory notes

Meets criteria?
(Yes/No)

i) establishes that persons who report or publicly disclose information on breaches anonymously, and are subsequently identified, qualify for protection

Identified anonymous reporting person do not need to suffer retaliation to qualify for protection.

ii) requires that public and private entities, as well as competent authorities, accept and follow up on anonymous reports

iii) requires that internal and external reporting channels enable anonymous reporting (e.g. through online reporting platform).

In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
iv) requires the establishment of channels for anonymous reporting that enable communication between the reporting person and the person handling the report.		
Relevant sources: TI Principle 13; TI Best Practice Guide pp 20-21; TI Position Paper pp 8-9		
The legislation can be considered MODERATE if it...		
v) meets both criteria (i) and (ii) above but not criterion (iii).		
The legislation can be considered WEAK if it...		
vi) does not meet both criteria (i) and (ii).		

No: Indicator Name:

Indicator Question:

17 PROHIBITION OF RETALIATION

TO WHAT EXTENT DOES THE LEGISLATION PROHIBIT RETALIATION?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating
(Best practice)



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) prohibits any form of retaliation against reporting persons and protected third parties	19	<i>If national legislation provides for a list of forms of retaliation, it should be indicative/non-exhaustive.</i>	
b) defines retaliation as any: <ol style="list-style-type: none"> 1. direct or indirect... 2. act or omission... 3. which occurs in a work-related context, ... 4. is prompted by internal or external reporting or by public disclosure, and... 5. which causes or may cause unjustified detriment to the reporting person. <p><i>(The above sentence has been broken down into bullet points to emphasise the various elements of the definition.)</i></p>	5.11 Recital 89	<i>As explained by recital 89, this covers retaliation taken, encouraged or tolerated by the reporting person's employer but also by their customer or recipient of services and by persons working for or acting on behalf of the latter, including colleagues and managers in the same organisation or in other organisations with which the reporting person is in contact in the context of their work-related activities (i.e. it covers the situations where the reporting person is self-employed or works for a contractor, subcontractor or supplier of the retaliator).</i>	
c) covers threats of retaliation and attempts of retaliation	19		

<p>d) ensures that at least the following forms of retaliation are covered:</p> <ul style="list-style-type: none"> • suspension, dismissal • demotion or withholding of promotion • transfer of duties, change of location, reduction in wages, change in working hours • withholding of training • negative performance assessment or employment reference • disciplinary measures, reprimand or other penalties • coercion, intimidation, harassment or ostracism • discrimination, disadvantageous or unfair treatment • failure to convert a temporary employment contract into a permanent one, or failure to renew - or early termination of - a temporary employment contract • harm, including harm to reputation or financial loss • blacklisting • early termination of a contract for goods or services • cancelation of a licence or permit • psychiatric or medical referrals 	19	<p><i>National legislation does not need to provide for a list of examples, but it should be formulated in a way that undeniably includes the forms of retaliation listed here. If a list is provided, it should be clearly indicative and non-exhaustive.</i></p>	
<p>e) provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons that retaliate against reporting persons and protected third parties.</p>	23.1(b)		

<p>B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE</p>		<p>Indicator Rating (Best practice)</p>	
<p>The legislation can be considered STRONG if it...</p>	<p>Explanatory notes</p>	<p>Meets criteria? (Yes/No)</p>	
<p>i) prohibits any form of retaliation against reporting persons and protected third parties (i.e. criterion (a) above)</p>			
<p>ii) broadly defines retaliation to include any act or omission which causes or may cause detriment (e.g. "all forms of retaliation, disadvantage or discrimination") (i.e. criteria (b2) and (b5) above)</p>	<p><i>Any list of forms of retaliation provided should be indicative/non-exhaustive.</i></p>		

iii)	covers retaliation against all whistleblowers whether they reported internally or externally or made a public disclosure (i.e. criterion (b4) above)		
iv)	covers direct and indirect forms of retaliation (e.g. targeting family or friends) (i.e. criterion (b1) above)		
v)	covers retaliation committed by or within organisations other than the reporting person's employer (e.g. customer, recipient of services)		
vi)	covers threats of retaliation and attempts of retaliation (i.e. criterion (c) above)		
vii)	covers retaliation occurring outside a work-related context.	<i>This differs from criterion (b3) above.</i>	
viii)	provides for effective, proportionate and dissuasive penalties for retaliating against reporting persons and protected third parties (i.e. criterion (e) above).		
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
ix)	requires all public and private entities to protect reporting persons and protected third parties (i.e. requires the employer to try to prevent and to address detriment to the reporting persons).		
x)	expressly includes forms of retaliation specific to reporting persons that are not employees (such as blacklisting, early termination of a contract for goods or services, cancelation of a licence or permit, listed in criterion (d) above)	<i>They are usually covered by broad definitions of retaliation. However, a clear stipulation is preferable.</i>	
xi)	provides for effective, proportionate and dissuasive penalties for failure to protect a reporting person		
Relevant sources: TI Principles 6 and 29; TI Best Practice Guide pp 21-23, 28-30 and 36-37; TI Position Paper pp 9-10			

The legislation can be considered **MODERATE** if it...

xii) meets criteria (i) – (iii) and criterion (viii) above **but** does not meet all criteria (iv) – (vii).

The legislation can be considered **WEAK** if it...

xiii) does not meet at least criteria (i) – (iii) and criterion (viii) above.

No: Indicator Name:

Indicator Question:

18 SUPPORT MEASURES

TO WHAT EXTENT ARE THERE PROVISIONS FOR SUPPORT FOR REPORTING PERSONS?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) ensures that reporting persons (and protected third parties) have access to information and advice on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. This information and advice should be comprehensive, independent, easily accessible to the public and free of charge.	20.1(a)		
b) ensures that reporting persons have access to effective assistance from competent authorities (i.e. those handling external reports) before any relevant authority involved in their protection (i.e. another authority or a court). This includes competent authorities confirming that external reporting has taken place.	20.1(b) Recital 90		
c) ensures reporting persons have access to legal aid in criminal and in cross-border civil proceedings, in accordance with EU law	20.1(c)		
d) ensures reporting persons have access to legal aid in further proceedings and legal counselling or other legal assistance, in accordance with national law.	20.1(c)	<i>“In accordance with national law” in this context is understood to mean that, where legal aid is provided for under national law, it should be made available to reporting persons.</i>	

In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
e) provide for financial assistance in the framework of legal proceedings	20.2		
f) provide for other support measures for reporting persons, including psychological support, in the framework of legal proceedings	20.2		
g) provide for access to the above support measures via an information centre or a single independent administrative authority	20.3		
h) provide for the certification of the qualification of reporting persons for protection.	20.1(b) Recital 90	<i>In such cases, reporting persons should have effective access to judicial review of that certification.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) ensures that reporting persons (and protected third parties) have access to information and advice on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. This information and advice should be comprehensive, independent, easily accessible to the public and free of charge (i.e. criterion (a) above).		
ii) ensures that reporting persons have access to effective assistance from competent authorities (i.e. those handling external reports) before any relevant authority involved in their protection (i.e. another authority or a court) (i.e. criterion (b) above)		
iii) ensures that reporting persons have access to legal assistance, including legal aid or financial assistance in the framework of legal proceedings (i.e. optional criterion (e) above)		

iv)	provides access to individual confidential advice, free of charge, to reporting persons, including referring them to the appropriate authorities		
v)	provides access to all the above-mentioned support measures for reporting persons and other protected persons via a single independent body.		
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vi)	provides for an assistance fund for legal procedures and for support for reporting persons in serious financial need	<i>Including financial need outside the framework of legal proceedings.</i>	
vii)	provides for psychological support to reporting persons.		

Relevant sources:

TI Principles 20 and 28; TI Best Practice Guide pp 54 and 58-61

The legislation can be considered **MODERATE** if it...

viii) meets at least criteria (i) – (iii) above.

The legislation can be considered **WEAK** if it...

ix) does not meet at least criteria (i) – (iii) above.

No: Indicator Name:

Indicator Question:

19 PROTECTION MEASURES AGAINST RETALIATION: RIGHTS AND REMEDIES

TO WHAT EXTENT DOES THE LEGISLATION GUARANTEE RIGHTS AND ACCESS TO REMEDIES, COVERING ALL DIRECT, INDIRECT AND FUTURE CONSEQUENCES OF ANY RETALIATION?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating (Best practice)



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) ensures that reporting persons and protected third parties have access to remedies (i.e. legal action)	21.8 Recital 95	<i>As explained by recital 95, while the types of legal action may vary between legal systems, they should ensure that compensation or reparation is real and effective, in a way which is proportionate to the detriment suffered and which is dissuasive.</i>	
b) ensures that reporting persons and protected third parties have access to remedial measures	21.6 Recital 94	<i>There should be remedial measures appropriate for all forms of retaliations. Recital 94 mentions for example reinstatement in the event of dismissal, transfer or demotion, and the restoration of a cancelled permit, licence or contract.</i>	
c) ensures that reporting persons and protected third parties have the right and access to interim relief pending the resolution of legal proceedings (in order to stop threats, attempts or continuing acts of retaliation)	21.6 Recital 96		
d) ensures that reporting persons and protected third parties have the right and access to full compensation for damage suffered.	21.8 Recital 94	“Full compensation” means that it should not be capped by legislation	

		<p>and that the following examples in Recital 94 should be covered:</p> <ul style="list-style-type: none"> • compensation for actual and future financial losses • compensation for other economic damage, such as legal expenses and costs of medical treatment • compensation for intangible damage such as pain and suffering. 	
e)	ensures that rights and remedies cannot be waived or limited (for example by denying protection or penalising reporting persons) by any agreement, policy, form or condition of employment, including pre-dispute arbitration agreements	24 Recital 91	<i>This covers loyalty clauses in contracts and confidentiality or non-disclosure agreements.</i>
f)	provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons that retaliate against reporting persons and protected third parties	23.1(b)	
g)	does not affect rules on the exercise by workers of their rights to consult their representatives or trade unions, and on protection against any unjustified detrimental measure prompted by such consultations as well as on the right to enter into collective agreements.	3.4	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i)	ensures that any retaliation is made null and void. In particular, reporting persons and protected third parties should have the right and access to reinstatement , for example in case of transfer, dismissal or demotion.		

ii) ensures that reporting persons and protected third parties have the right and access to full financial compensation for damage suffered (i.e. not capped by legislation, but to be determined according to the circumstances of the case), including for: <ul style="list-style-type: none"> • attorney and mediation fees • lost past, present and future earnings and status • pain and suffering (potentially including medical expenses, relocation costs or identity protection) 	<i>In order to achieve a rating of STRONG, the legislation should ensure full reparation of all direct, indirect and future consequences of any retaliation that restores the reporting persons to a situation that would have been theirs had they not suffered retaliation.</i>	
iii) ensures that reporting persons and protected third parties have the right and access to a fair hearing before an impartial forum (i.e. court, whistleblowers authority or Alternative Dispute Resolution), with full right of appeal		
iv) ensures that reporting persons and protected third parties have the right and access to interim relief pending the resolution of legal proceedings (in order to stop threats, attempts or continuing acts of retaliation) (i.e. criterion (c) above)	<i>The conditions for being granted interim relief should not be too difficult to meet (including a reasonable timeframe to apply).</i>	
v) provides for effective, proportionate and dissuasive penalties for retaliating against reporting persons and protected third parties (i.e. criterion (f) above)		
vi) ensures that rights and remedies cannot be waived or limited (for example by denying protection or penalising reporting persons) by any agreement, policy, form, or condition of employment, including pre-dispute arbitration agreements, loyalty clauses in contracts or confidentiality or non-disclosure agreements (i.e. criterion (e) above).		
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
vii) includes an indicative list of non-financial remedial measures, including measures applicable to whistleblowers who are not employees , such as: <ul style="list-style-type: none"> • the restoration of a cancelled permit, licence or contract • withdrawing a litigation against an individual • deletion of any negative records that could constitute a “dossier” for blacklisting or later retaliation 		

viii)	provides for effective, proportionate and dissuasive penalties for failure to protect and support a reporting person		
ix)	provides for personal protection measures in cases where a reporting person's life or safety, or that of their family members, are in jeopardy (including actual or likely danger to life, body or property).		

Relevant sources:

TI Principles 12, 14, 20 and 21; TI Best Practice Guide pp 24-25, 27-28 and 50-55; TI Position Paper pp 7-8

The legislation can be considered **MODERATE** if it...

x) **largely** meets the criteria (i) – (vi) above; **BUT**

xi) includes one (but not more than one) of the following limitations:

- financial compensation is capped; **or**
- the range of detrimental consequences eligible for reparation is narrowly defined; **or**
- there are barriers to a fair hearing and/or interim relief (e.g. high legal costs, the conditions for being granted interim relief are difficult to meet).

The legislation can be considered **WEAK** if it...

xii) does not meet all criteria (i) – (vi) above; **OR**

xiii) **largely** meets all of the criteria (i) – (vi) above **but** also includes 2 or more of the limitations described in criterion (xi) above.

No:	Indicator Name:	Indicator Question:
20	PROTECTION MEASURES AGAINST RETALIATION: BURDEN OF PROOF	TO WHAT EXTENT DOES THE LEGISLATION PLACE THE BURDEN OF PROOF UPON THE PERSON WHO TOOK THE DETRIMENTAL ACTION TO DEMONSTRATE THAT SUCH ACTION WAS NOT CONNECTED WITH THE REPORTING PERSON'S REPORT OR DISCLOSURE?

A. COMPLIANCE WITH THE EU DIRECTIVE	Indicator Rating (Best practice)	
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The legislation complies with EU Directive requirements if, in proceedings relating to a detriment suffered by a reporting person...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) it is presumed that the detriment was made in retaliation for the report or the public disclosure, once the reporting person has established that they reported or made a public disclosure and suffered a detriment	21.5		
b) it falls on the person who has taken the detrimental measure to prove that that measure was “based on duly justified grounds” in cases described under criterion (a) above.	21.5 Recital 93	<i>“Based on duly justified grounds” should be interpreted, in light of recital 93, as “not linked in any way to the reporting or the public disclosure”.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if, in proceedings relating to a detriment suffered by a reporting person...	Explanatory notes	Meets criteria? (Yes/No)
i) it is presumed that the detriment was made in retaliation for the report or the public disclosure, once the reporting person has established that they reported or made a public disclosure and suffered a detriment (i.e. criterion (a) above)		

ii) it falls on the person who is responsible for the detrimental measure to clearly and convincingly demonstrate that the detrimental measure was in no way connected with, or motivated by, the report or disclosure, in cases described under criterion (i) above.	<i>The use of language such as “based on duly justified grounds” does not meet this criterion as it might legitimise investigations of a reporting person for the sole purpose of justifying retaliation measures.</i>	
In addition, the legislation may be considered even stronger if, in proceedings relating to a detriment suffered by a reporting person...	Explanatory notes	Meets criteria? (Yes/No)
iii) it presumes that the reporting person qualifies for protection.	<i>If the person who is responsible for the detrimental measure challenges this presumption, that person should carry the burden of proving that the reporting person does not meet the conditions to qualify for protection (as described under indicator 5).</i>	

Relevant sources:

TI Principle 8; TI Best Practice Guide pp 55-56; TI Position Paper p7

The legislation can be considered **MODERATE** if it...

iv) meets criterion (i) above; **BUT**

v) does not meet criterion (ii) above.

The legislation can be considered **WEAK** if it...

vi) meets neither criterion (i) nor criterion (ii) above.

No: Indicator Name:

Indicator Question:

**21 PROTECTION MEASURES AGAINST RETALIATION:
WAIVER OF LIABILITY**

**TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH A WAIVER OF LIABILITY
FOR REPORTING PERSONS?**

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
<p>a) establishes that reporting persons shall not incur liability of any kind relating to (legal or contractual) restrictions on disclosure of information for making a report or public disclosure. This is on condition that they had reasonable grounds to believe that the reporting or public disclosure of such information was necessary for revealing a breach.</p>	<p>21.2 Recital 91</p>	<p><i>“Liability of any kind” should cover civil, criminal, administrative and employment-related liability.</i></p> <p><i>In respect of internal and external reporting, the latter condition (reasonable grounds...) is not in line with best practice (see criterion B(i) below). Thus, failure of national law to comply with the Directive in this regard need not be highlighted.</i></p>	
<p>b) establishes that reporting persons shall not incur liability in respect of the acquisition of or access to the information which is reported or publicly disclosed. This is on condition that it did not constitute a self-standing criminal offence.</p>	<p>21.3 Recital 92</p>	<p><i>“Self-standing” should be understood as “wholly unrelated to the ability to make a report or disclosure”.</i></p> <p><i>Recital 92 clarifies that the waiver of liability should apply in cases where reporting persons:</i></p> <ul style="list-style-type: none"> <i>make copies of documents to which they have lawful access or remove them from the</i> 	

		<p><i>premises of their organization, in breach of contractual or other clauses stipulating that the relevant documents are the property of the organisation</i></p> <ul style="list-style-type: none"> • <i>access the emails of a co-worker or files which they normally do not use within the scope of their work, take pictures of the premises of their organisation or access locations they do not usually have access to.</i> 	
c)	<p>establishes that reporting persons shall not incur liability of any kind in legal proceedings as a result of reports or public disclosures. This includes legal proceedings 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.</p> <p>Those reporting persons have the right to rely on having reported breaches or made a public disclosure to seek dismissal of the case.</p> <p>This is on condition that they had reasonable grounds to believe that the reporting or public disclosure was necessary for revealing a breach.</p>	21.7	<p><i>“liability of any kind” should cover civil, criminal, administrative and employment-related liability.</i></p> <p><i>In respect of internal and external reporting, the latter condition (reasonable grounds...) is not in line with best practice (see criterion B(ii) below). Thus, failure of national law to comply with the Directive in that regard need not be highlighted.</i></p>
d)	<p>provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons for bringing vexatious proceedings against reporting persons and protected third parties.</p>	23.1(c)	

In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
e) establish that, in legal proceedings, the person initiating the proceedings should carry the burden of proving that the reporting person does not meet the conditions to waive their liability.	Recital 97	<i>This is best practice and should be encouraged.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
<p>i) establishes that reporting persons shall not incur liability of any kind (legal or contractual) in respect of a report or public disclosure.</p> <p>For public disclosures, the waiver of liability in respect of legal restrictions on disclosure of information can be conditioned on the reporting person having reasonable grounds to believe that the public disclosure of such information was necessary for revealing a breach (i.e. that the disclosure was limited to the amount of information reasonably necessary to bring to light the wrongdoing).</p>	<p><i>Fulfilling the conditions and thresholds for protection as described under Indicator 5 is sufficient to waive liability. No additional condition should be required.</i></p> <p><i>The possible exception described opposite:</i></p> <ul style="list-style-type: none"> • <i>does not apply to internal and external reports</i> • <i>only applies in respect of restrictions on disclosure of information</i> • <i>does not apply to contractual restrictions on disclosure of information.</i> 	
<p>ii) establishes that reporting persons are immune from disciplinary and legal proceedings (including those related to libel, slander, copyright and data protection) and that the reporting person can rely on having made a report or a public disclosure to seek dismissal of the case.</p>	<p><i>Fulfilling the conditions and thresholds for protection as described under Indicator 5 is sufficient to benefit from immunity.</i></p>	

<p>For public disclosures, immunity in respect of legal restrictions on disclosure of information can be conditioned on the reporting person having reasonable grounds to believe that the public disclosure of such information was necessary for revealing a breach (i.e. that the disclosure was limited to the amount of information reasonably necessary to bring to light the wrongdoing).</p>	<p><i>No additional condition should be required.</i></p> <p><i>The possible exception described opposite:</i></p> <ul style="list-style-type: none"> • <i>does not apply to internal and external reports</i> • <i>only applies to disciplinary and legal proceedings relating to (legal) restrictions on disclosure of information.</i> 	
<p>iii) establishes that, in legal proceedings, the person initiating the proceedings should carry the burden of proving that the reporting person does not meet the conditions to waive their liability. (i.e. criterion (e) above).</p>		
<p>iv) provides for effective, proportionate and dissuasive penalties for individuals and entities who bring abusive or vexatious disciplinary or legal proceedings against a reporting person.</p>		

Relevant sources:

TI Principle 10; TI Best Practice Guide pp 25-26; TI Policy Paper p6

The legislation can be considered **MODERATE** if it...

v) meets at least criterion (i) above; **AND**

vi) meets criterion (ii) above fully or largely (i.e. establishes that the reporting person can rely on having reported breaches or made a public disclosure **as a defence** in legal or disciplinary proceedings **rather than to seek dismissal** of the case).

The legislation can be considered **WEAK** if it...

vii) does not meet at least criteria (v) and (vi) above.

No: Indicator Name:

Indicator Question:

22 PROTECTION MEASURES FOR PERSONS CONCERNED

TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH BALANCED PROTECTION MEASURES FOR PERSONS CONCERNED (LEGAL OR NATURAL PERSON TO WHOM THE REPORTED BREACH IS ATTRIBUTED)?

A. COMPLIANCE WITH THE EU DIRECTIVE

**Indicator Rating
(Best practice)**



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) ensures 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	22.1 16.2	<i>This criterion should be read in conjunction with article 16, as accessing their file can reveal the identity of the reporting person (either directly or indirectly through information from which the identity can be deducted). The identity of the reporting person may only be disclosed where there is a legal obligation to do so, and such obligation should be confined to the context of investigations by national authorities or judicial proceedings and should be necessary and proportionate, including with the view to safeguard the rights of defence of the person concerned.</i>	
b) requires competent authorities to ensure, in accordance with national law, that the identity of persons concerned are protected for as long as investigations are ongoing	22.2		

c)	ensures that the rules relating to the design of external channels, the processing of personal data and record keeping as regards the protection of the identity of reporting persons also apply to the protection of the identity of persons concerned	22.3		
d)	provides for measures for compensating damage resulting from knowingly reporting or publicly disclosing false information	23.2	<i>The whistleblower protection legislation itself does not need to provide for such measures and can just refer to existing applicable national law.</i>	
e)	provides for effective, proportionate and dissuasive penalties for knowingly reporting or publicly disclosing false information.	23.2	<i>The whistleblower protection legislation itself does not need to include such provision, as in case of knowingly false report or disclosure, the reporting person does not qualify for protection and thus the existing national legislation regarding the making of false statements (such as defamation, libel and slander law) applies.</i>	

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i)	ensures that persons concerned 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, in balance with the obligation to protect the reporting person against retaliation and the duty to maintain the identity of the reporting person confidential.	<i>The identity of the reporting person may only be disclosed where there is a legal obligation to do so, and such obligation should be confined to the context of investigations by national authorities or judicial proceedings</i>	

		<i>and should be necessary and proportionate, including with the view to safeguard the rights of defence of the person concerned (see in indicator 14 above).</i>	
ii)	requires competent authorities to ensure, in accordance with national law, that the identity of persons concerned are protected for as long as investigations are ongoing (i.e. criterion (b) above)		
iii)	ensures that the rules relating to the design of external channels, the processing of personal data and record keeping, as regards the protection of the identity of reporting persons, also apply to the protection of the identity of persons concerned (i.e. criterion (c) above)		
iv)	provides for measures for compensating damage resulting from knowingly reporting or publicly disclosing false information (i.e. criterion (d) above)		
v)	ensures that a person can only be held liable if they knowingly reported or disclosed false information	<i>Terms such as “abusive” and “malicious” – which could suggest that reporting persons who reported information that they had reasonable ground to believe was true could be held liable because of their motives – should not be used.</i>	
vi)	ensures that penalties for making a report or disclosure demonstrated to be knowingly false (under the whistleblower protection legislation or other legislations such as defamation, libel and slander law) are proportionate and not so severe as to act as a deterrent to actual whistleblowing		
vii)	ensures that where it provides for penalties for knowingly reporting or publicly disclosing false information, such penalties are not more severe than, or cumulate with, penalties under existing national legislation regarding the making of false statements (such as defamation, libel and slander law).	<i>The whistleblower protection legislation itself does not need to provide for penalties for knowingly reporting or publicly disclosing false information, as in such case the reporting person does not qualify for</i>	

	<i>protection and thus the existing national legislation regarding the making of false statements (such as defamation, libel and slander law) applies.</i>	
viii) stipulates that in cases regarding knowingly false reports or disclosure, the burden falls on the person making that claim to prove that the reporting person knew the information was false at the time of the report or disclosure.		

Relevant sources:

TI Principle 9; TI Best Practice Guide 14-17; TI Position Paper pp 6-7

The legislation can be considered **MODERATE** if it...

ix) meets criteria (i) – (v) above; **BUT**

x) meets only one of criteria (vi) – (viii) above.

The legislation can be considered **WEAK** if it...

xi) does not meet at least criteria (i) – (v) above; **OR**

xii) meets criteria (i) – (v) above **but** meets none of criteria (vi) – (viii) above.

No: Indicator Name:

Indicator Question:

23 PENALTIES

TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH PENALTIES AND SANCTIONS FOR RETALIATION, INTERFERENCE, ETC?

A. COMPLIANCE WITH THE EU DIRECTIVE

Indicator Rating
(Best practice)



The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) provides for penalties for hindering or attempting to hinder reporting	23.1(a)		
b) provides for penalties for retaliating against reporting persons and protected third parties	23.1(b)		
c) provides for penalties for bringing vexatious proceedings against reporting persons and protected third parties	23.1(c)		
d) provides for penalties for breaching the duty of maintaining the confidentiality of the identity of reporting persons	23.1(d)		
e) ensures that the above-mentioned penalties are applicable to natural or legal persons	23.1		
f) ensures that the above-mentioned penalties are effective, proportionate and dissuasive.	23.1		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) provides for penalties for hindering or attempting to hinder reporting (i.e. criteria (a) above)		
ii) provides for penalties for retaliating against reporting persons and protected third parties (i.e. criteria (b) above)		
iii) provides for penalties for bringing vexatious proceedings against reporting persons and protected third parties (i.e. criteria (c) above)		
iv) provides for penalties for breaching the duty of maintaining the confidentiality of the identity of reporting persons (i.e. criteria (d) above)		
v) provides for penalties for failure to fulfil an obligation to implement internal reporting mechanisms within a given time period.	<i>Penalties should also apply for failure to have regard to meet the minimum standards provided in the law or regulation.</i>	
vi) provides for penalties for failure to follow up on reports		
vii) ensures that the above-mentioned penalties are effective, proportionate and dissuasive (i.e. criteria (f) above).		
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
viii) provides for penalties for failure to protect a reporting person		
ix) provides for penalties for failure to provide feedback on the follow-up to the reporting person within a reasonable timeframe		

x) provides for penalties for failure to ensure that information on reporting is published and easily accessible.

Relevant sources:

TI Principle 29; TI Best Practice Guide pp 20, 28-30, 33, 47 and 60-62; TI Position Paper pp 9-11

The legislation can be considered **MODERATE** if it...

xi) meets at least criteria (i) - (iv) and (vii) above.

The legislation can be considered **WEAK** if it...

xii) does not meet at least criteria (i) - (iv) and (vii) above, regardless of whether criteria (v) and (vi) are met.

IV. TRANSPARENCY AND ACCOUNTABILITY MEASURES

No: 24		Indicator Name: TRANSPARENCY, PARTICIPATION AND REVIEW		Indicator Question: TO WHAT EXTENT ARE TRANSPARENT AND PARTICIPATORY DESIGN, MONITORING AND REVIEW OF THE LAW ENSURED?	
A. COMPLIANCE WITH THE EU DIRECTIVE				Indicator Rating (Best practice)	
The legislation may (optionally)...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)	
a) foresee the collection of the following national level data: <ul style="list-style-type: none"> the number of reports received by the competent authorities the number of investigations and proceedings initiated as a result of such reports and their outcome if ascertained, the estimated financial damage, and the amounts recovered following investigations and proceedings, related to the breaches reported. 		27.2	<i>The Directive does not require that Member States collect this data. But if a Member State does and data is available at a central level, then the Member State should submit it annually to the European Commission. Central collection of such data is best practice and should be encouraged.</i>		



B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE

Indicator Rating
(Best practice)



The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
i) is a stand-alone legislation (i.e. containing the national whistleblowing legal framework)	<p><i>A stand-alone legislation will lend both clarity and coherence to the legal framework for protecting whistleblowers.</i></p> <p><i>A stand-alone legislation can be completed by regulations and administrative provisions.</i></p>	
ii) was designed in consultation with key stakeholders including employee organisations, business/employer associations, civil society organisations and academia		
iii) requires the data referred to in criterion (a) above to be collected and published annually		
iv) requires a formal periodic review of whistleblower protection laws, regulations and administrative provisions. Such reviews should be published.		
v) establishes that such a review process should involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.		
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
vi) additionally, requires the collection and annual publication of data on: <ul style="list-style-type: none"> • the prevalence of wrongdoing in the public and private sectors • awareness of and trust in reporting mechanisms • the time taken to process cases 		

vii) requires the collection and **annual publication** of similar data on internal reports received by public institutions.

Relevant sources:

TI Principles 24, 25 and 26; TI Best Practice Guide pp 61-63 and 66-68; TI Position Paper p11

The legislation can be considered **MODERATE** if it...

viii) meets criterion (i) above; **AND**

ix) meets two of the four criteria (ii) –(v) above.

The legislation can be considered **WEAK** if it...

x) does not meet at least criteria (viii) and (ix) above.

No:	Indicator Name:	Indicator Question:
25	WHISTLEBLOWING AUTHORITY	TO WHAT EXTENT DOES THE LEGISLATION FORESEE A SINGLE INDEPENDENT WHISTLEBLOWING AUTHORITY?

A. COMPLIANCE WITH THE EU DIRECTIVE	Indicator Rating (Best practice)	
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In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) foresee the provision of support measures via an information centre or a single independent administrative authority.	20.3		

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE	Indicator Rating (Best practice)	
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The legislation can be considered STRONG if...	Explanatory notes	Meets criteria? (Yes/No)
i) it designates a single independent national whistleblowing authority		
ii) such single independent national whistleblowing authority is distinct and independent from the competent authority(ies) that handle external reports		
iii) it mandates such an authority to provide advice and support to reporting persons as per criterion (v) of indicator 18 above		
iv) it mandates such an authority to receive and investigate complaints about retaliation		
v) it mandates such an authority to receive and investigate complaints about improper investigations of external reports by competent authorities.		

vi)	it mandates such an authority to provide guidance and advice to employers and competent authorities on how to set up effective whistleblowing mechanisms		
vii)	it mandates such an authority to monitor and review the functioning of whistleblower protection laws and frameworks, including via the collection and publication of data as per indicator 24		
viii)	it mandates such an authority to raise public awareness so as to encourage the use of whistleblower protection provisions and enhance cultural acceptance of whistleblowing.		
In addition, the legislation may be considered even stronger if...		Explanatory notes	Meets criteria? (Yes/No)
ix)	it mandates such an authority to order protective measures when there is retaliation and to enforce those measures (including through appropriate penalties).		

Relevant sources:

TI Principle 28; TI Best Practice Guide pp 58-65; TI Position Paper p11

The legislation can be considered **MODERATE** if it...

x) meets at least criterion (i) above; **AND**

xi) meets at least three of criteria (ii) – (viii) above.

The legislation can be considered **WEAK** if it...

xii) does not meet at least criterion (i) above; **OR**

xiii) meets criterion (i) above **but** meets fewer than three of criteria (ii) – (viii) above.

ANNEX 2: KEY SOURCES

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