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The Crisis of Legitimacy in Whistleblower Protection in EU Institutions: The Paradox of a System Meant to Set the Standard²

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Abstract

The article discusses the crisis of legitimacy in whistleblower protection within two EU institutions, revealing a paradox: bodies expected to set an example operate ineffectively and in a fragmented manner. A comparison of the European Commission's and the European Parliament's rules with Directive 2019/1937 highlights major shortcomings, including the absence of independent reporting channels, automatic protection against reprisals, and adequate transparency. Both institutions fall short of the standards established by the Directive. The judgment in Case T-793/22, *TU v European Parliament*, confirms that this situation is unacceptable under EU law. The legal status quo deepens mistrust and undermines the legitimacy of EU governance, which itself requires urgent reform. The article concludes with recommendations to strengthen whistleblower protection, emphasising the need for concrete legal and institutional changes to restore trust in EU institutions amid growing integration challenges.

Keywords: Directive 2019/1937, EU Staff Regulations, whistleblowing, double standards, crisis of legitimacy.

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Kryzys legitymizacji ochrony sygnalistów w instytucjach UE: paradoks systemu, który miał wyznaczać standardy³

Streszczenie

Artykuł omawia kryzys legitymizacji ochrony sygnalistów w dwóch instytucjach UE, ujawniając paradoks: organy, które powinny dawać przykład, działają nieskutecznie i w sposób fragmentaryczny. Porównanie przepisów Komisji Europejskiej i Parlamentu z dyrektywą 2019/1937 uwypukla poważne niedociągnięcia – brak niezależnych kanałów zgłaszania, brak automatycznej ochrony przed represjami oraz słaba przejrzystość. Obie instytucje nie spełniają wymogów dyrektywy, nie osiągając niezbędnych standardów. Wyrok T-793/22 TU przeciwko Parlamentowi Europejskiemu potwierdza, że sytuacja ta jest nie do przyjęcia w świetle prawa UE. *Status quo* prawne pogłębia nieufność i podważa legitymację zarządzania UE, które samo w sobie wymaga pilnej reformy. Artykuł kończy się zaleceniami dotyczącymi wzmocnienia ochrony sygnalistów, podkreślając potrzebę konkretnych zmian prawnych i instytucjonalnych w celu przywrócenia zaufania do instytucji UE w obliczu rosnących wyzwań związanych z integracją.

Słowa kluczowe: Dyrektywa 2019/1937, Regulamin Pracowniczy UE, whistleblowing, podwójne standardy, kryzys legitymizacji.

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Introduction

The protection of whistleblowers in EU institutions should be a pillar of citizens' trust in the European legal order and of effective public interest governance at the supranational level. However, the legal and organisational reality reveals a deep crisis of legitimacy in a system that was intended to serve as a model for Europe as a whole. Directive 2019/1937⁴ imposed an obligation on Member States (MS) to implement high standards of whistleblower protection. Meanwhile, although it was adopted by EU institutions, these standards do not apply directly to employees of the European Commission (EC) and the European Parliament (EP). The mechanisms in place within these institutions are fragmented and do not provide automatic or effective protection for whistleblowers. This regulatory disparity gives rise to a fundamental paradox: the EU requires MS to provide minimum legal guarantees that are not fully reflected within its own institutional framework. This situation leads to a loss of trust and a sense of inequality, thus undermining the legitimacy of EU institutions as leaders in the fight against abuse and corruption. The relevance of this analysis is reinforced by the judgment of the General Court of the EU in Case T-793/22, which confirms that the exclusion of EU officials from the scope of the Directive cannot lead to a lowering of protection standards.

Although, as stated in recital 23 of its preamble, Directive 2019/1937 does not formally apply directly to officials and employees of EU institutions, the standards set out therein establish a minimum level of protection that EU institutions are required to respect in their internal regulations. In the context of the hierarchy of EU law and the principle of *effet utile*, EU institutions cannot apply lower standards to their own employees than those they require of other entities.

Due to the complexity of the EU's institutional structures and the diversity of its internal regulations, this article focuses exclusively on two key institutions: the EC and the EP. These institutions were selected because of their central role in the EU legislative process, the large number of officials they employ, and the scale and scope of their anti-abuse activities.

The aim of this article is to conduct a comparative legal analysis of whistleblower protection guarantees in the EC and the EP, with particular emphasis on whether

⁴ Directive of the EP and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 303/17.

their internal whistleblowing regulations comply with the minimum requirements set out in Directive 2019/1937.

The author advances the following research hypothesis: despite the formal existence of whistleblower protection mechanisms in EU institutions, the level of protection remains fragmented and does not meet the minimum standards set out in Directive 2019/1937. As a result, officials and employees of EU institutions – who should serve as models of transparency and accountability – enjoy a lower level of protection than public- and private-sector in the MS.⁵ This, in turn, contributes to a crisis of trust among employees and exacerbates the democratic legitimacy deficit, weakening the EU's moral authority as a guardian of transparency and the fight against corruption.

This research employs comparative legal analysis, doctrinal analysis of normative documents, case-law analysis, and a review of the relevant academic literature.

Exclusion of EU Employees from the Scope of Directive 2019/1937

Recital 23 of the preamble to Directive 2019/1937 is a key interpretative element in the application of whistleblower protection rules to officials and employees of EU institutions.

In practice, this means that two situations must be distinguished. First, Directive 2019/1937 does not apply to EU officials in relation to reports made in the context of their employment relationship with EU institutions, bodies, or agencies. In such cases, only the internal protection mechanisms provided for in Articles 22a–22c of the EU Staff Regulations apply, and protection derives from the internal legal framework established by the EU institutions. Secondly, the Directive applies only in situations where an EU official or other employee reports breaches in a professional context but outside the employment relationship with EU institutions. The interpretation covers, among other things, cases of hybrid employment, activities undertaken outside the EU administration, and other situations in which the whistleblower falls within the Directive's definition of an "employee" but is not acting within the institutional structures of the EU.

⁵ N. Aiossa, *Make 2020 the Year of The EU Staff Whistleblower*. Available from: <https://transparency.eu/eu-whistleblower/>

Evolution of the Protection of Whistleblowers – EU Officials

The first act regulating the status of employees of the European Communities was the Staff Regulations of Officials of the European Communities, adopted by Council Regulation of 18 December 1961.⁶

The original version of the Staff Regulations does not contain any provisions specifically dedicated to the protection of whistleblowers. However, certain rules concerning the reporting of irregularities can be derived from it, including Articles 17 (duty of professional secrecy), 17a (freedom of expression), and 22 (duty of loyalty to the institution).⁷

Art. 17 obliges officials to maintain professional secrecy both during and after their service, which affects the manner in which irregularities may be reported and creates tension between the duty of loyalty to the institution and the public interest in disclosing violations of the law.

Article 17a guarantees freedom of expression to EU officials and requires that any public disclosure of information relating to the work of the EU institutions be preceded by notification to the appointing authority.⁸

Groundbreaking legal guarantees in this area were introduced by Council Regulation No. 723/2004.⁹ Articles 22 and 22a require officials to report serious violations, such as fraud or corruption, directly to their superiors or to OLAF and protect them from adverse professional consequences if they act in good faith.

⁶ Regulation No. 31 (EEC), 11 (EAEC) of 18 December 1961 (OJ 45, 14 June 1962, pp. 1385).

⁷ For terminological consistency, “officials” refers to all persons covered by the EU Staff Regulations, regardless of their formal status.

⁸ The right to freedom of expression, which applies to EU officials notwithstanding their duty of loyalty to the institutions, occupies a central place in the EU’s system of protective mechanisms. The duty of loyalty should not be interpreted as a restriction on reporting irregularities. CJEU case law confirms that freedom of expression is a fundamental right and cannot be unduly restricted, V. Kronenberg, *Libertà di espressione e fedeltà all’istituzione*, „Quaderni Costituzionale” 2001, 2, pp. 431–434, and R. Hernu, *Le devoir de loyauté du fonctionnaire des Communautés européennes*, „RTDE” 2002, 38(4), pp. 685–724, see more: European Communities (ECR 1989, p. 4285). Judgment of 17 February 1998 in Case T-183/96, E. v Economic and Social Committee (ECR-SC 41, p. I-A-67 and II-159, paragraph 41). See, for example, Judgment of 6 December 1989 in Case C-249/87, Mulfinger and others v Commission of the European Communities (ECR 1989, p. 4127). Judgment of 19 July 1999 in Case T-74/98, Luciano Mammarella v Commission of the European Communities (ECR-SC 1999, p. I-A-151 and II-797, paragraph 40), Judgments of 5 June 1980 in Case 24/79, Dominique Noëlle Oberthür v Commission of the European Communities (ECR 1980, p. 1743); of 22 March 1995 in Case T-583/93, Petros Kotzonis v Economic and Social Committee (ECR 1995, p. II-665; ECR-SC 1995, p. I-A-61 and II-203); and of 19 October 1995 in Case T-562/93, Dieter Obst v Commission of the European Communities (ECR-SC 1995, p. I-A-247 and II-737). Judgment of 12 October 1978, in Case 86/77, Kuno Ditterich v Commission of the European Communities (ECR 1978, p. 1855).

⁹ Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities, OJ L 124, 27 April 2004, pp. 1–118.

Article 21a protects officials from adverse consequences resulting from their refusal to comply with an unlawful order.

Article 22b permits the reporting of violations, for example to the President of the EC or the EP, provided that OLAF or the institution concerned has been notified in advance and that the conditions for acting in good faith have been satisfied. The institution has 60 days to inform the whistleblower of the expected timetable for action in response to the report.

An analysis of the literature indicates that the solutions adopted in Regulation No. 723/2004 constituted, at the time, one of the most comprehensive systems for the protection of whistleblowers in the public sector at the supranational level, setting standards worthy of implementation in the legislation of the Member States.¹⁰

In October 2013,¹¹ a further regulation was adopted to strengthen the whistleblower protection system in EU institutions by introducing Article 22c into the Staff Regulations. This provision requires each EU institution to establish its own internal procedures for handling reports made under Articles 22a and 22b.¹²

A significant milestone was the adoption by the EP of the Resolution of 14 February 2017 on the role of whistleblowers in protecting the EU's financial interests. The resolution is an act of EU institutional policy aimed at implementing uniform mechanisms for the protection of persons reporting violations. The document analyses the need for an appropriate legal and practical framework that guarantees whistleblowers full protection against retaliation and provides effective channels for reporting irregularities. The Resolution emphasises the obligation to implement whistleblower protection in EU institutions in accordance with Articles 22a–22c of the Staff Regulations, highlighting the importance of a comprehensive and consistent system of public-sector ethics management.¹³

Consequently, the Resolution and the legislative amendments to the Staff Regulations provided the impetus for the further development of whistleblower protection at EU level, culminating in the adoption, on 23 October 2019, of the

¹⁰ S. Gerdemann, *The European Court of Human Rights' Effect on the Transposition of the Whistleblowing Directive*, [in:] *Europe's New Whistleblowing Laws: Transposition, Implementation and Implications*, ed. S. Gerdemann, Groningen 2023, pp. 125–139.

¹¹ Regulation (EU, Euratom) No. 1023/2013 of the European Parliament and of the Council of 22 October 2013, amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, OJ L 287 of 29 October 2013, pp. 15–62.

¹² See more: Internal Rules Implementing Article 22c of the Staff Regulations, 4 December 2015. Available from: https://transparency.eu/wp-content/uploads/2024/03/EP_whistleblowing-rules_en.pdf, Judgment of the General Court (Fourth Chamber, Extended Composition) of 11 September 2024 in Case T-793/22.

¹³ European Parliament Resolution of 14 February 2017 on the role of whistleblowers in protecting the EU's financial interests (2016/2055 (INI), OJ C 252/56.

Directive on the protection of persons who report breaches of Union law.¹⁴ The Directive established minimum standards for the protection of whistleblowers, including confidentiality, proper handling of reports, prohibition of retaliation, and a system of protective measures for whistleblowers.

Investigation by the European Ombudsman (2014)

Following the adoption of Regulation No. 1023/2013, in July 2014 European Ombudsman Emily O'Reilly asked nine EU institutions to provide information on the implementation of whistleblower protection rules.¹⁵

Emily O'Reilly informed José Manuel Barroso, President of the EC, about this initiative in a letter dated 24 July 2014. The Ombudsman's actions were inspired by the EC's report on anti-corruption, published on 3 February 2014¹⁶.

The study revealed significant shortcomings and delays in the implementation of internal regulations on the protection of whistleblowers in EU institutions. Despite the formal obligation to establish protection mechanisms resulting from the amendment to the Staff Regulations, most EU institutions have not fully complied with their obligations in this regard¹⁷.

The Ombudsman noted that the EC had made the most rapid progress. Nevertheless, even the EC had not implemented comprehensive internal rules, relying instead on general guidelines governing whistleblowing procedures.¹⁸

The Ombudsman emphasised that whistleblowers are key to detecting irregularities and building trust in EU institutions. However, officials often do not

¹⁴ Directive of the EP and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, p. 17.

¹⁵ Dods EU Political Intelligence, *EU Ombudsman office investigates into whistleblower protection in the EU institutions*, "The Parliament Magazine" 2020. Available from: <https://www.theparliamentmagazine.eu/news/article/dods-eu-alert-eu-ombudsman-office-investigates-into-whistleblower-protection-in-the-eu-institutions>.

¹⁶ The letter concerns the Ombudsman's own initiative on the protection of whistleblowers – 01/1/2014/PMC. Available from: <https://www.statewatch.org/media/documents/news/2014/jul/eu-ombs-whistle-blowing-letter.pdf>; Report from the EC to the Council and the European Parliament, EU Anti-Corruption Report, COM/2014/038 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0038>. The February 2014 report highlighted corruption problems in all EU MS and estimated the cost of corruption at around €120 billion per year. This was the only report in the series – publication was planned every two years, but the EC discontinued further editions in 2017, which was criticized by Transparency International.

¹⁷ Free Group, *Europe and 'Whistleblowers': still a bumpy road...*, May 2015. Available from: <https://free-group.eu/2015/05/21/europe-and-whistleblowers-still-a-bumpy-road/>; Dods EU Political Intelligence, *op. cit.*

¹⁸ *The Ombudsman's decision and letters concerning the procedures*. Available from: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/59102> and <https://www.ombudsman.europa.eu/en/doc/correspondence/en/54612ombudsman.europa>.

report violations for fear of reprisals. The urgent need for systemic reforms and the harmonisation of whistleblower protection standards across all EU institutions were highlighted.¹⁹

Institutional Practice of Whistleblower Protection in the EP and EC

The EP's internal regulations implementing Article 22c of the Staff Regulations, adopted in 2015²⁰, established a framework where whistleblowers reported serious irregularities to their supervisors in good faith. Reports required a written form; identity remained confidential, though anonymity was not permitted. Protection included a ban on discrimination in performance reports and transfer assistance, with Article 24 assistance available for reprisals. Acknowledgments were issued within five working days and action timeframes within 60 days.

The 2023 reform²¹ introduced a "new standard" providing a multichannel system, including a secure online tool for anonymous reporting. Key changes include a legal presumption of good faith and a broad definition of "reprisal," specifically covering negative assessments. Accredited assistants (APA) now have dedicated reporting channels independent of MEPs, such as the APA Front Office. The institution now bears a direct obligation to ensure no retaliation, and whistleblowers are notified of decisions to open or close inquiries within 15 working days.

The whistleblower protection system in the EC is based on an extensive body of internal rules that provides officials with mechanisms for reporting irregularities and guarantees legal protection.²²

The first relevant document is the *Guidelines on Whistleblowing*, adopted by the EC on 6 December 2012 on the initiative of Vice-President Maroš Šefčovič.²³ The document clarifies the concept of violations, the scope of reporting channels

¹⁹ Euractiv, *Ombudsman pushes for more protection for EU whistleblowers*, 2015. Available from: <https://www.euractiv.com/news/ombudsman-pushes-for-more-protection-for-eu-whistleblowers/>.

²⁰ European Parliament, Internal Rules Implementing Art. 22c of the Staff Regulations, December 4, 2015. Available from: https://transparency.eu/wp-content/uploads/2024/03/EP_whistleblowing-rules_en.pdf, European Parliamentary Research Service: Protecting whistle blowers in the EU. Briefing 747103, May 2023, pp. 10–12. Available from: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747103/EPRS_BRI\(2023\)747103_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747103/EPRS_BRI(2023)747103_EN.pdf).

²¹ European Parliament, Internal Rules Implementing Article 22 c of the Staff Regulations, Bureau Decision, November 20, 2023, PE 755.348/BUR.

²² V. Abazi, *The European Union Whistleblower Directive: A Game Changer for Whistleblowing Protection?*, "Industrial Law Journal" 2020, 49(4), pp. 640–656.

²³ Guidelines on Whistleblowing, Communication SEC (2012) 679, Guidelines on Whistleblowing, C(2018)1362.

(internal and external, including OLAF), the obligation to acknowledge receipt of a report within 5 days, and the provision of feedback within a reasonable period (recommended 60-90 days). Whistleblowers acting in good faith benefit from confidentiality protections and may submit anonymous reports that enable investigations to be conducted. The Guidelines strictly prohibit retaliatory measures, and disciplinary sanctions, including dismissal, may be imposed for breaches of those provisions.

Another internal EC act regulating the procedures for reporting irregularities is Administrative Notice No. 79-2013 of 19 December 2013. This document regulates in detail the procedure for submitting applications, complaints, and requests for assistance within EU institutions, implementing the provisions of Articles 90 and 24 of the Staff Regulations.²⁴

Complaints should be addressed to the Appeals and Case Monitoring Unit (HR.D.2) through various communication channels (e-mail, fax, post, in person), and a decision should be issued within 4 months. The substantive content of the complaint is sufficient; no special form is required.

This document constitutes an internal implementing measure rather than an independent legal act with the status of a Commission decision or regulation. It is therefore procedural and administrative in nature and serves as an internal implementing instrument binding on the EC administration, ensuring compliance with EU law, including the protection of whistleblowers in accordance with Article 22c of the Staff Regulations and the EU Guidelines on Whistleblowing.

According to the EC's report covering the period 1 January 2017 to 31 December 2019, all EU institutions, including the EP and the EC, have introduced detailed procedural arrangements for the protection of whistleblowers.²⁵

Standards for the Protection of Whistleblowers in the Light of the Case Law: T-793/22 *TU v EP*

A significant precedent in the field of whistleblower protection in EU institutions is the judgment of the General Court of the European Union in Case T-793/22, *TU*

²⁴ Administrative Notice No. 79-2013 of 19 December 2013, Update of the Arrangements for Submitting Requests and Complaints (Article 90(1) and (2) of the Staff Regulations) and Requests for Assistance (Article 24 of the Staff Regulations). Available from: <https://www.aiace.uk/wp-content/uploads/2013/08/CommissionArt90fullarrangements.pdf>. This document updates the information previously published on 18 June 2006, in Administrative Notice No. 28-2006.

²⁵ Report from the European Commission to the European Parliament and the Council on the rules adopted by the appointing authority of each institution to give effect to the Staff Regulations of 28 May 2021, COM(2021) 258 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0258&rid=6>.

v EP, delivered in September 2024²⁶ concerning the protection of whistleblowers in EU institutions.

The applicant was an accredited parliamentary assistant at the EP, employed to support one of the MEPs for the period from August 2019 to February 2022. In July 2021, he reported alleged workplace harassment (mobbing) by the MEP and also disclosed potential financial irregularities the MEP had allegedly committed, submitting a report to both the EP and OLAF.

In response, the EP adopted a temporary protective measure by transferring the applicant to a parliamentary delegation. Following further retaliatory measures, the applicant was ultimately relieved of his duties for the remainder of his contract.

The applicant repeatedly requested a transfer to another position and an extension of his contract, arguing that he needed to cooperate with the OLAF investigation and that he needed protection. The European Parliament rejected these requests, prompting the applicant to bring proceedings before the General Court seeking a statement that the decision not to renew his contract was invalid, and compensation for the damages he suffered.

In that judgment, the General Court of the European Union ruled for the first time in such a comprehensive manner on the scope of the EU administration's obligations towards officials reporting irregularities within the EP.

The Court analysed in detail the obligations arising, *inter alia*, from Articles 22a-22c of the Staff Regulations, which require the EU administration to ensure genuine and effective protection for any person who, acting in good faith, reports serious legal violations or irregularities in the functioning of the institutions.

The key points of the judgment emphasised, among other things, that:

- ❑ protection is granted *automatically* upon the reporting of irregularities, which means that the institution must prove that the actions taken against the whistleblower are not retaliatory;
- ❑ the institution is not required to formally *confirm the* status of the whistleblower;
- ❑ the administration must confirm receipt of the report and inform the whistleblower of the follow-up actions taken;
- ❑ protective measures must be adequate, varied and must effectively counteract retaliatory actions; they cannot be limited merely to formally relieving officials of their duties;

²⁶ Judgment of the General Court (Fourth Chamber, Extended Composition) of 11 September 2024, Case T-793/22, TU v EP.

- ❑ in the event of damage resulting from retaliatory actions, the burden of proving that all available protective measures have been implemented lies with the institution; this reversal of the burden of proof is crucial for the effective protection of whistleblowers;
- ❑ protection also includes the obligation to maintain strict confidentiality of the whistleblower's identity – disclosure of this information without the consent of the person concerned constitutes a serious violation of the law;
- ❑ the standard of protection for whistleblowers applied by EU institutions cannot be lower than the level required by EU law and the minimum standards of Directive 2019/1937.

The Court awarded damages to the applicant, finding that the EP had violated his rights to support and protection and had breached the confidentiality of the whistleblower's identity.

This judgment provides important guidance on the interpretation of whistleblower protection rules within the EU administration and serves as a valuable reference for future cases concerning the obligations of EU institutions towards whistleblowers.

Comparison of Standards: EU Internal Regulations vs. Directive 2019/1937

A comparison of the internal rules of EU institutions with Directive 2019/1937 reveals key similarities and gaps in the protection of whistleblowers within the EU administration. Despite a common regulatory basis, not all EU rules meet the minimum standards established by the Directive. The judgment in Case T-793/22, TU v EP, confirms that the standard of protection afforded to whistleblowers by EU institutions cannot be lower than the minimum level required by EU law, particularly in light of the provisions of Directive 2019/1937, as this would undermine the effective and uniform implementation of EU law, especially in the fight against corruption and financial fraud.²⁷ According to Article 1 of the Directive and Recital 1 of its preamble, the overarching objective is to establish a “*high level of balanced and effective protection*” in both the public and private sectors.

²⁷ T. Wahl, *General Court Ruled on Necessary Protective Measures for Whistleblower in the EP*, 23 October 2024. Available from: <https://eucrim.eu/news/general-court-ruled-on-necessary-protective-measures-for-whistleblower-in-the-ep/>.

Channels for Reporting Irregularities

Article 19 of Directive 2019/1937 introduces 3 main channels for reporting irregularities: internal reporting, external reporting, and public disclosure. Within EU institutions, as noted above, the reporting mechanism is based on Articles 22a–22c of the Staff Regulations, under which an official must inform their superior, Director-General, or OLAF of serious irregularities, particularly those involving financial misconduct or corruption. Article 22b also permits reports to be made to the highest EU authorities, including the Presidents of the EC, the EP, and the Council, as well as to the European Ombudsman.²⁸

The EP's Internal Rules of 2023 introduced a multi-channel system, including, among other things, a secure online tool that allows for anonymous reports. A key innovation is the introduction of a presumption of good faith on the part of the whistleblower and a broad definition of retaliation, covering, for example, negative performance evaluations. Parliamentary assistants (APAs) now have dedicated reporting channels independent of members of parliament, and the institution is currently under a strict obligation to ensure there is no retaliation. Whistleblowers are now informed of the decision to open or close an investigation within 15 business days. The standard established by the new regulations aims for full alignment with the requirements of Directive (EU) 2019/1937.

Protection against Reprisals

Art. 19 of Directive 2019/1937 prohibits any retaliation against whistleblowers, including direct and indirect actions, threats, and attempts at reprisals. The reversal of the burden of proof (Article 21(8)) is also a key principle: if a whistleblower demonstrates that they reported a breach and suffered harm, the institution must prove that the actions taken were unrelated to that report.

The internal regulations of the EC and the EP do not provide for the automatic suspension of disciplinary proceedings or other adverse actions against the whistleblower upon reporting. In practice, this means that protection against reprisals depends on an administrative or disciplinary decision in each case and is not granted automatically by operation of law. This difference is fundamental to the effectiveness of protection – the lack of automaticity may lead to a situation where

²⁸ T. Nemer, J.V. Clarindo Dos Santos, *Comments on Directive (EU) 2019/1937 of the EP and the Council of 23 October 2019 on the Protection of Persons who report breaches of Union Law*, "Wrocław Review of Law, Administration and Economics" 2021, 11(2), pp. 1–30.

the whistleblower is forced to prove that the actions taken against them are retaliation for the report before the institution takes protective measures.

The introduction of a presumption of good faith into EP regulations in 2023 is a step toward strengthening the legal position of whistleblowers in these proceedings.

Perhaps the greatest weakness of the current framework is the absence of a clearly regulated reversal of the burden of proof, under which the institution concerned would be required to demonstrate that any retaliatory measures were unrelated to the whistleblower's report.

Confidentiality and Protection of Personal Data

Article 16(1) of Directive 2019/1937 requires Member States to keep the identity of the whistleblower confidential, disclosing it only to authorised persons and with the whistleblower's consent. Exceptions to this rule apply only where disclosure is necessary under Union or national law, for example to guarantee the right of defence in court proceedings. The whistleblower must be notified before disclosure, unless this would jeopardise the investigation. The Directive also permits anonymous reports but leaves it to Member States to decide whether to investigate them (Articles 6(2) and 9(1)(e)).

In EU institutions, confidentiality rules are governed by both the Internal Rules of the EP and the EC guidelines. The Internal Rules of the EP provide that the identity of the whistleblower remains confidential, unless the whistleblower consents or the law requires it. The EC allows anonymous reports, provided they are sufficiently detailed to allow further investigation.²⁹

The 2019 EDPS guidelines, which provide a practical interpretation of Regulation 2018/1725, play a significant role in data protection. The EDPS identifies nine principles governing whistleblowing, including clear reporting channels, confidentiality and identity protection, data minimisation, transparency, the identification of relevant entities and their rights, appropriate access to data, and the proportionality of data storage and security measures.³⁰

However, the internal rules of the EC and EP do not provide for the automatic deletion of irrelevant data or detailed data minimisation requirements, creating a risk of excessive data collection and undermining the principle of proportionality.

²⁹ Decision 33/2017 of the Governing Board of the European Institute of Innovation and Technology on EIT Guidelines on Whistleblowing, 12114.EIT.2017,GB.WP. Available from: https://www.eit.europa.eu/sites/default/files/gb_decision_on_eit_guidelines_on_whistleblowing.pdf.

³⁰ Guidelines on processing personal information within a whistleblowing procedure, European Data Protection Supervisor, December 2019. Available from: https://www.edps.europa.eu/sites/default/files/publication/19-12-17_whistleblowing_guidelines_en.pdf.

Provision of Feedback

Directive 2019/1937 requires acknowledgment of receipt of a report within seven days and the provision of feedback to the whistleblower within a maximum of three months. The internal rules of the EC and the EP introduce similar but less stringent time limits. For example, the EP's Internal Rules provide for confirmation of receipt within five working days and for the whistleblower to be informed of the expected timeframe for further action within 60 days. In addition, the regulations require that the whistleblower be notified of any decision to initiate or close an administrative investigation within 15 working days of the decision being made. The key difference is that the Directive establishes specific deadlines, whereas the internal rules of the EU institutions use expressions such as "*reasonable time*" or "*as far as possible*," which may weaken the guarantees afforded to whistleblowers. The judgment of the General Court in Case T-793/22, TU v EP, confirms that the failure to provide timely feedback undermines the effectiveness of whistleblower protection and may discourage the reporting of irregularities.

Conclusions

The analysis presented here shows that, rather than serving as a model response to the risks of abuse and a means of building public trust, the whistleblower protection system in the EC and the EP exacerbates the legitimacy paradox by relying on fragmented and ineffective solutions that fall short of the standards established by Directive 2019/1937 in key areas, including the independence of reporting channels, automatic protection, and transparency.

The lack of systematic data, especially from the EP, indicates a lack of transparency and a risk of reprisals against whistleblowers.³¹

The judgment in Case T-793/22 clearly demonstrates that it is no longer acceptable for whistleblowers to become victims of the very system intended to protect them, or for EU institutions to adopt solutions that provide a lower level of protection than those they require of the Member States. Without decisive reforms – including the establishment of an independent protection body, the harmonisation

³¹ For more information, see Whistleblowing in Action in the EU Institutions: https://www.whistleblower-net.de/pdf/ADIE_Whistleblowing_EU.pdf, Report from the EC to the Council and the EP: 35th Annual Report on the protection of the European Union's financial interests and the fight against fraud – 2023. Available from: https://www.parlament.gv.at/dokument/XXVII/EU/194704/imfname_11403003.pdf, Twenty-fifth report of the European Anti-Fraud Office, 1 January to 31 December 2024, Available from: https://ec.europa.eu/olaf-report/2024/index_en.html.

of procedures with the Directive, the automatic application of protective measures, and transparent reporting – the crisis of confidence among both officials and EU citizens will deepen. The paradox of double standards undermines the EU's authority and points to the urgent need for comprehensive reform and the reorganisation of whistleblowing mechanisms if the integration project is to remain ethically, legally, and socially credible in the face of current and future challenges.

It is recommended that the procedures adopted be evaluated regularly, the scope of protection be extended, and the deadlines for feedback and areas of responsibility be precisely defined. Harmonising the practices of the EC and the EP with the standards established by the Directive would strengthen the legal protection afforded to whistleblowers while enhancing transparency and legal certainty for officials of the EU institutions.

Consideration should be given to establishing an independent central body for the protection of whistleblowers within the EU institutions, as has already been done in some Member States. Such a body could ensure uniform standards of protection and effective investigative mechanisms independent of the institutional hierarchy.

The protection of whistleblowers in EU institutions remains an area in need of further reform. Despite the progress made since 2004, the current system may discourage potential whistleblowers from reporting irregularities.

The implementation of the above recommendations is a prerequisite for strengthening citizens' trust in EU institutions and effectively protecting whistleblowers from the adverse consequences of reporting legal violations. It is also a key instrument in combating corruption and abuse within the EU institutional framework.

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