

**ETUC BRIEFING
AMENDING THE WHISTLEBLOWING DIRECTIVE
TO ENSURE THAT WORKERS CAN GET THE HELP OF THEIR TRADE UNION WHEN
BLOWING THE WHISTLE**

Trade unions have long called for protection of whistle-blowers and we believe that the Whistleblowing Directive as introduced by the EU Commission and improved by the European Parliament, will go a long way to provide much needed protection. Many major deficiencies have been addressed, importantly workers are now protected when they blow the whistle on breaches of EU employment and equality rights and the requirement to blow the whistle internally was removed. If implemented correctly on national level it will as well, ensure protection when the report is made to the labour or health and safety inspectorate.

However, the recognition of the role of trade unions and the right of a worker to be represented by their trade union is still not dealt with in an appropriate way.

The two major problems that need to be addressed are:

- 1.) Whistle-blowers must be guaranteed the right to be represented by their trade union;**
- 2.) The risk that so called third-party independent bodies can carry out some of the roles and functions of trade unions and undermine them must be mitigated;**

Demand 1: Ensure the worker has the right to be represented by their trade union

The Directive as amended by the European Parliament provides in Article 5 as follows:

The procedures for reporting and following up of reports referred to in Article 4 shall ensure that the reporting person or any person considering reporting has the right to be accompanied by a workers' representative at all stages of the procedure, including during physical meetings as provided for under this Article.

There are three interlinked problems with this approach.

- 1.) The directive needs to make it clear that it is the worker who chooses who is their representative NOT the employer. This provision is very badly worded as it opens up the very real danger that the employer will determine who the workers' representative is for the purpose of the whistleblowing procedure, this may be an unintended consequence however it must be amended to ensure against this undesirable development.

The ILO Convention No. 135 on worker representatives clearly sets out who a “worker representative” is. The ILO Convention shall be referred to in the recitals.

*For the purpose of this Convention the term **workers' representatives** means persons who are recognised as such under national law or practice, whether they are--*

(a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

2.) The Directive also needs to make it clear that the worker can choose their trade union as their workers' representative. This clarification is needed otherwise there is a real risk that national and EU Courts will interpret the provision to only mean an EWC representative or that the workers representative must be an employee of the company or enterprise.

3.) The use of the phrase ‘accompanied by’ inappropriately limits the role of the workers representative to little more than a witness to the process. It merely provides for the workers representative to be present with the worker. Trade union representatives do a lot more than just sit there, they actively intervene during discussions, keep a record of the discussions, advise the worker on next steps etc.

We are therefore proposing the following amendment to address these deficits

*The procedures for reporting and following up of reports referred to in Article 4 shall ensure that the reporting person or any person considering reporting has the right to be accompanied by a workers' representative **or represented by their trade union** at all stages of the procedure, including during physical meetings as provided for under this Article.*

Demand 2: Trade unions must be recognised as legitimate actors

Article 14 requires Member States to establish independent third-party advice and support service for whistle-blowers. Specifically, the Directive provides as follows:

Article 14

1. *Member States shall provide for the person reporting or intending to make a report or a public disclosure to be given support in the procedure. Such support shall ensure the identity of the persons referred to in this paragraph remains confidential and may, in particular, take the form of:*

- (a) free, impartial and confidential advice, especially on the scope of this Directive, the reporting channels and the protection granted to the reporting person and the rights of the concerned person;*
- (b) legal advice in the event of a legal dispute, in accordance with article 15(8);*
- (c) psychological support, in accordance with article 15(8).*

2. This support may be provided by an information centre, or a single and clearly identified independent administrative authority.

It is essential that the operation of the independent third-party advice service does not operate in a way that undermines trade unions. To ensure this the ETUC recommends including a guarantee as follows:

New 3. This support will be provided in a manner that does not undermine the legitimate role and operation of trade unions to provide these support services.