

2023

SURVEY: WHISTLEBLOWING PROTECTION IN THE AFS



EUROMIL aisbl
European Organisation of Military Associations
and Trade Unions
Boulevard du Jardin Botanique 20
1000 Brussels, Belgium
Tel: +32 480 660933
www.euromil.org



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INTRODUCTION

The [EU Whistleblowing Directive 2019/1937](#) lays down rules to better protect and support those “blowing the whistle” on breaches of law. The Directive came into force in November 2019, requiring EU Member States to implement rights and obligations concerning whistleblowers, private organizations and the Member States themselves in national law by 17 December 2021.

Almost two years after the implementation deadline, EUROMIL conducted a survey to look for information on the **treatment of military personnel across Europe under their national legislation implementing the EU Whistleblowing Directive**. Whistleblower protection should concern any person in its work-related activities and, therefore, also military personnel as “workers”.

The survey aimed to explore any distinctions between armed forces personnel and other public service employees (“employees” vs. “workers”), thus, assessing whether military personnel in other EU Member States face differentiation, disadvantages, or discrimination under their respective national whistleblowing legislation.

EUROMIL remains committed to strengthening the whistleblower rights of military personnel and of institutional and national legal systems which promote and protect the disclosure of public interest information in the security and defence sectors.

Last year, EUROMIL, in collaboration with WIN – Whistleblowing International Network - published the report “[Demystifying Whistleblowing in the Armed Forces](#)“, a brief introductory overview and Q&A guide to public interest reporting in the defence sector and military ombuds institutions.

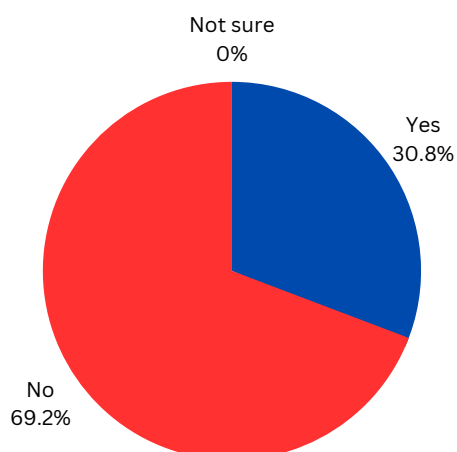
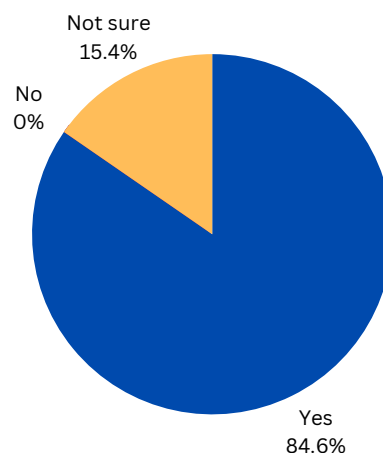


PARTICIPANTS

Country	Military Association
Belgium	ACMP-CGPM
France	UNION APNM
Germany	DBwV
Greece	PFEARFU
Ireland	RACO
Italy	ASSODIPRO
Luxembourg	SPAL
Malta	AFM-GWU
Montenegro	SOVCG
Slovakia	ZVSR
Spain	AUME
Sweden	SAMO
The Netherlands	AFMP

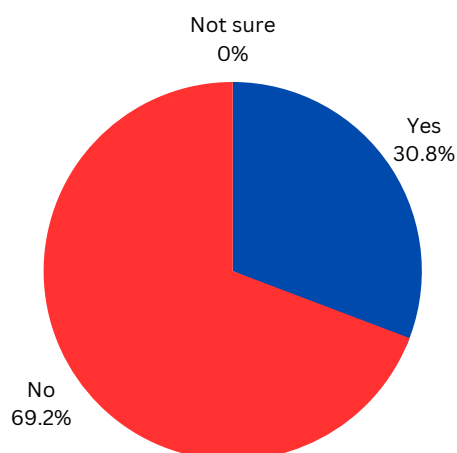
MAIN RESULTS

Does the implementation of the EU Whistleblower Directive 2019/1937 in your country **cover** military personnel?



Are there any distinctions between military personnel and other public service employees? (e.g., "employees" vs. "office holder" or "worker")

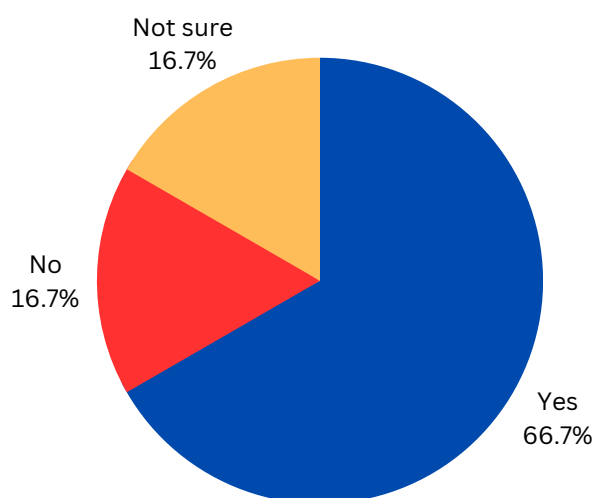
Are there exceptions in the legislation related to national security?





MAIN RESULTS

Do you believe that the treatment of military personnel under the Whistleblowing legislation in your country is in line with the EU Whistleblowing Directive 2019/1937?



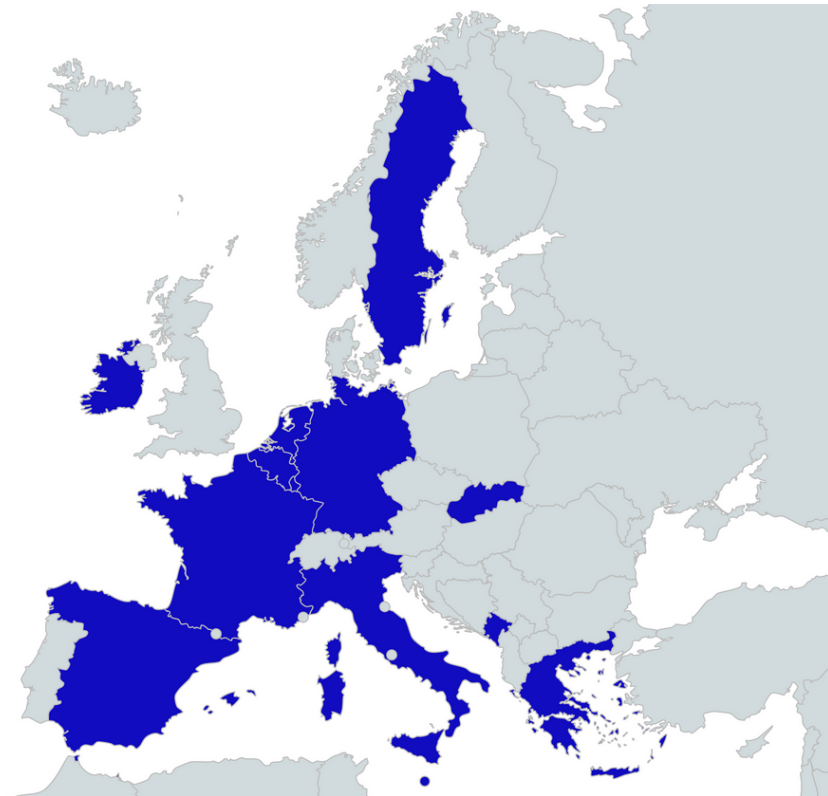
Respondent countries have implemented the EU Whistleblower Directive 2019/1937 to cover military personnel.



RESULTS BY COUNTRY

In this section, we delve into the findings obtained from the survey conducted by EUROMIL in August 2023.

Each participating member association provided insights and data specific to their country, resulting in a comprehensive dataset that allows for nuanced analysis and cross-country comparisons.



The data and insights obtained provide a foundation for further analysis and action for initiatives aimed at strengthening the safeguards for whistleblowers throughout the European Union.



BELGIUM



Based on the survey, Belgium's implementation of the EU Whistleblower Directive 2019/1937 **includes military personnel and does not entail their specific exclusion.**

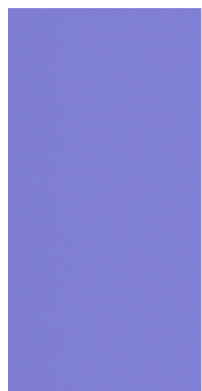
The absence of distinct provisions for military personnel suggests a **uniform application** of the legislation across public service employees.

The Directive has been implemented through law [8 DECEMBER 2022 - 2022034749](#) - *Wet betreffende de meldingskanalen en de bescherming van de melders van integriteitsschendingen in de federale overheidsinstanties en bij de geïntegreerde politie.*

The perception among respondents is that the treatment of military personnel in Belgium is consistent with the principles outlined in the EU Whistleblowing Directive.



FRANCE



France has effectively implemented the EU Whistleblower Directive 2019/1937 to **include military personnel**. The Directive's provisions extend to encompass military personnel, ensuring they benefit from the protections outlined in the legislation.

The EU Whistleblower Directive 2019/1937 has been transposed into French law through [LOI no 2022-401 du 21 mars 2022](#).

The survey response does not indicate **any distinctions** between military personnel and other public service employees in France concerning the Whistleblower legislation.

The survey response does not mention any specific protections or entitlements that pertain exclusively to military personnel within France's legislation on whistleblowers.

The treatment of military personnel under the Whistleblower legislation in France is **perceived as in line** with the EU Whistleblowing Directive 2019/1937.



GERMANY



EUROMIL's survey outcomes provided a nuanced perspective on Germany's approach to implementing the EU Whistleblower Directive 2019/1937 for military personnel.

The relevant legislation, [Hinweisgeberschutzgesetz - HinSchG](#), Art. 1 (31 MAY 2023), **includes military personnel**. Notably, the legislation **distinguishes between military personnel and other categories** ("employees").

However, the survey's findings highlight that Germany's legislation **does not include matters concerning national security and military affairs**.

Survey respondents concur that the treatment of military personnel under Germany's Whistleblowing legislation **aligns with the provisions** of the EU Whistleblowing Directive 2019/1937.

The underlying objective of the legislation is to provide a platform for employees, including military personnel, to raise concerns about wrongful actions. The German law is structured to uphold this intent by incorporating both **internal and external institutions** to facilitate the reporting of such actions.

GREECE



The survey highlights a lack of clarity about whether military personnel are included or excluded from whistleblowing protection.

As regards the coverage, the provisions outlined in the legislation ([Ministerial Decision: ΔΙΔΑΦ/Φ.69/223/οικ.1604/31.1.2023](#)) are **applicable to individuals engaged in both public and private sectors**, who, within the context of their work, acquire knowledge about wrongdoing.

The legislation does **not extend** its safeguards to individuals who report **violations related to matters of defence or security**.

The survey findings also illustrate the existence of certain protections within the Armed Forces, specifically addressing incidents of violence and harassment. However, these protections do not directly correspond to the provisions outlined in the EU Directive.

Given the unavailability of concrete instances where the mentioned legislation has been invoked to safeguard PFEARFU's members, a definite response regarding the coverage of military personnel in Greece couldn't be provided.

In essence, the protective measures raise questions about the level of coverage offered to those serving in the armed forces.



IRELAND



In Ireland, the implementation of the EU Whistleblower Directive through the [Protected Disclosure Act 2014](#) (PDA 2014) **covers military personnel.**

However, there are **notable distinctions between military personnel and other public service employees** concerning whistleblowing protections.

Military personnel in Ireland are considered 'office holders' rather than 'employees' under the PDA 2014. This classification has significant implications, as it means that **military personnel do not enjoy the same protections against penalization or threats of penalization for making protected disclosures**, unlike 'employees' who have these safeguards under Section 12 of the Act.

Penalties that may be awarded, as a result of a S. 12 breach, include compensation of up to 5 years remuneration.

This distinction becomes even more apparent when comparing the treatment of military personnel to other 'office holders,' such as the Irish Police Force and civil servants (Section 3(2)). Despite also being traditionally classified as 'office holders,' the PDA 2014 specifically designates them as 'employees' for the purposes of the Act, thus affording them greater protections.



IRELAND

Military personnel can refer complaints to the Ombudsman for the Defence Forces (ODF) under the ODF Act 2004. However, this route is less effective than lodging a complaint with the Workplace Relations Commission (available to police or civil servants) because ODF rulings are not legally enforceable.

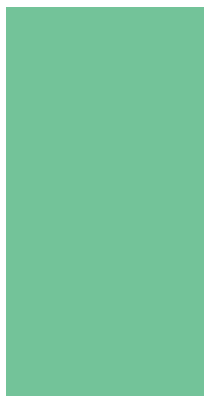
The **treatment of military personnel** under Ireland's Protected Disclosure Act 2014 (PDA 2014) is **considered not in line with the EU Whistleblowing Directive 2019/1937**. The Directive advocates for consistent protection for whistleblowers across member states, yet Ireland has deliberately differentiated and disadvantaged military personnel concerning the protections afforded under the Act.

While Section 13 of the PDA 2014 permits Defence Forces personnel to seek compensation through tort action, it remains insufficient in ensuring uniform protection as outlined in the EU Directive.

This differentiation and disadvantage in terms of protections for military personnel, as opposed to other “office holders”, need to be addressed to meet the Directive's standards and promote transparency, accountability, and integrity within the Defence Forces.



ITALY



Italy has put into effect the EU Whistleblowing Directive via [D.Lgs. n. 24/2023](#), effective from 15 July 2023. Article 3 of this legislation specifies that its **provisions also extend to military personnel**.

Even under the previous Whistleblowing legislation, which was in force before the revised EU legislation, the Italian Whistleblowing Authority (ANAC) asserted that military personnel and police forces, being public administration employees, were subject to the whistleblowing regulations. Consequently, military personnel were entitled to the protections granted by the law to safeguard whistleblowers.

Based on these premises, the Anti-Corruption Authority, in its [resolution number 311 of the 21st of June 2022](#), imposed a monetary penalty on the commanding officer of a *Capitaneria di Porto* (Coast Guards), whose subordinate had reported alleged irregularities to the Court of Auditors.

With the new legislation, there has been the introduction of the so-called "external reporting," where the whistleblower, in addition to submitting their report through the internal channels provided by their company or public entity, can also directly contact ANAC or public disclosure channels as identified by the Authority in its Guidelines (Article 7). The extent to which military personnel can access this tool is not yet certain.



ITALY

The Capitaneria del Porto case:

The military member had received a disciplinary penalty for reporting alleged irregularities in the procedures for the transfer of military personnel (including their own transfer) by order of the Commander-in-Chief. Upon receiving the retaliation complaint, ANAC conducted thorough investigations into the case, concluding that the sanctions imposed by the military command were retaliatory in nature and that the disciplinary proceedings against the military member were therefore null and void.

The sanctions had been imposed on the subordinate "for making highly critical and damaging judgments about the dignity of the body to which they belonged," with the argument that whistleblowing regulations should not apply to military personnel "since they are subject to a specific and special legal framework." However, the Authority emphasized that whistleblowing protection laws peacefully apply to military personnel and police forces.

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However, the Authority emphasized that whistleblowing protection laws peacefully apply to military personnel and police forces. "Individuals belonging to military personnel can be considered whistleblowers, and as public officials, they are obligated to report criminal offences and are authorized to report offences of any other nature."

Furthermore, according to the command, the employee had "clearly pursued an exclusive personal interest," and therefore it was necessary to protect the integrity of public administration by imposing a rigorous penalty on the subordinate.

The Anti-Corruption Authority held a completely different view, emphasizing instead "the public interest in knowing and requesting an investigation into the management of the economic resources underlying the movement of military personnel, especially if it could lead to damage to public funds".



LUXEMBOURG



The EU Whistleblower Directive 2019/1937 has been implemented in Luxembourg in [Loi du 16 mai 2023 portant transposition de la directive \(UE\) 2019/1937](#) and **covers military personnel.**

In Luxembourg, **no distinctions** are present between military personnel and other public service employees. All individuals covered are treated uniformly under the law.

Luxembourg's legislation on whistleblowers does not include any specific protections or entitlements that solely pertain to military personnel.

The treatment of military personnel under the Whistleblower legislation in Luxembourg is **perceived as in line** with the EU Whistleblowing Directive 2019/1937.



MALTA



The [Protection of the Whistleblower Act \(Cap 527\)](#) was adopted on 23 October 2019. The extent to which the EU Whistleblower Directive 2019/1937's implementation encompasses **military personnel** within the Armed Forces of Malta is uncertain.

Distinct rules and regulations tailored to the Armed Forces of Malta **differentiate them from other forms of employment**, indicating a separate framework for military personnel.

Within the Armed Forces of Malta, the whistleblower concept serves as a provisional measure, with many personnel preferring to engage with issues through established Trade Union channels.

MONTENEGRO



In Montenegro, the implementation of the EU Whistleblower Directive 2019/1937 **extends to cover military personnel**. The legislation in question, as stipulated in the [*Official Gazette of Montenegro, no. 53/2014 and 42/2017*](#), encompasses military personnel under its ambit (Articles 44-70).

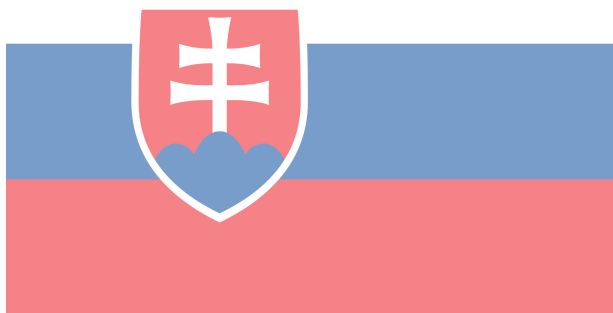
In Montenegro, there are **no distinctions** made between military personnel and other public service employees under the Law on prevention of corruption. This legislation covers both civilian and military personnel, treating them on an equal footing without differentiation.

It is noteworthy that Montenegro is actively working towards aligning its legislation with the EU Whistleblower Directive. Amendments to the existing law are currently in development and are set to include the provisions of the EU Directive.

These amendments are planned for adoption in the second quarter of 2024, demonstrating Montenegro's commitment as an EU accession candidate to meeting its legal obligations.

Within the Ministry of Defense, Montenegro has **established an internal procedure** named "Instruction on the procedure upon a whistleblowers report on a threat to the public interest on existence of corruption, protection of whistleblowers and record keeping". Additionally, a delegated person is assigned to address issues related to whistleblowing.

SLOVAKIA



The Slovak legislation that incorporates the Directive's provisions is the [Act no. 54/2019 On the protection of whistleblowers against anti-social activities and on the amendment and supplementation of certain laws](#). Section 7 (§ 7) of this act addresses the protection of whistleblowers, **including military personnel**, without any specific exclusions.

In Slovakia, **no distinctions** are made between military personnel and other public service employees under the abovementioned legislation. Both categories are treated uniformly with regard to the protections and entitlements provided by the legislation.

Slovakia's legislation offers **specific protections and entitlements for military personnel**. According to Section 7 of the Act, an employer is restricted from taking an employment act against a protected whistleblower without their consent, except with the approval of the office. This approval requirement applies to a protected whistleblower who is a professional soldier only if specified by a special regulation. The approval of the office is exempted in cases where the employment act grants a claim or pertains to the termination of the employment relationship due to an independent legal fact.

The treatment of military personnel under Slovakia's Whistleblowing legislation perceived in line with the EU Whistleblowing Directive.

Slovakia's approach to implementing the EU Whistleblower Directive 2019/1937 demonstrates commitment to ensuring that military personnel receive the safeguards stipulated by the Directive.

SPAIN



The EU Whistleblower Directive 2019/1937 has been incorporated into Spanish law through [Ley 2/2023, de 20 de febrero, reguladora de la protección de las personas que informen sobre infracciones normativas y de lucha contra la corrupción](#). The **Directive does not specifically exclude military personnel**. Article 2.5 introduces an **exception related to essential interests of State security in procurement procedures**.

In Spain, **no distinctions exist** between military personnel and other public service employees before the national alert system as whistleblowers.

The treatment of military personnel under the Whistleblower legislation in Spain is generally in line with the EU Whistleblowing Directive 2019/1937.

The Directive's overarching principles are adhered to, but there is a **distinction in terms of the scope of protection** for specific types of offences, as the protection refers solely to serious or very serious administrative and criminal offences, not including the violation of ethical or integrity codes.



SWEDEN



The [Directive's implementation into Swedish law](#) has been approved in 2021. Sweden's legislation extends to **cover military personnel**, ensuring that they are afforded the protections outlined in the legislation.

In Sweden, a **distinction is present between military personnel and other public service employees** concerning the treatment of certain information. While the legislation applies to military personnel, it **excludes classified information concerning national security**.

The legislation does not provide specific protections or entitlements for military personnel within the context of whistleblowing.

The treatment of military personnel under Sweden's Whistleblowing legislation is **deemed to be in line** with the EU Whistleblowing Directive 2019/1937.

THE NEDERLANDS



The EU Whistleblower Directive 2019/1937 has been implemented in The Netherlands through the [Whistleblower Protection Act](#), which came into force on 18 February 2023. The Act **encompasses military personnel**, and there are no explicit exclusions for them within the legislation.

In The Netherlands, military personnel are **not subjected to distinctions** that set them apart from other public service employees within the framework of the Whistleblower Protection Act. The Act applies uniformly to all covered individuals.

While The Netherlands has implemented the Whistleblower Protection Act to cover military personnel, there are **specific organizational mechanisms in place** within the Dutch Ministry of Defence (MOD).

The Centrale Organisatie Integriteit Defensie provides a platform for whistleblowers within the organization to raise their concerns. However, questions have been raised about the effectiveness of this internal organization's behaviour.

In the past, there have been instances concerning whistleblowing by an individual, where their concerns were not adequately addressed by the Dutch MOD. Furthermore, the AFMP's former union president was drawn into these matters previously, as she sought to voice her apprehensions regarding the MOD's apparent failure to learn from its previous errors.

The treatment of military personnel under the Whistleblower Protection Act in The Netherlands is **considered in line** with the EU Whistleblowing Directive 2019/1937.



CONCLUSION

In light of the survey findings, the majority of member states have taken significant steps towards aligning their national legislation with the EU Whistleblowing Directive by extending its coverage to military personnel. However, in some instances, uncertainty persists regarding the precise application of this legislation for military personnel, as observed in countries like Greece.

Several countries, such as Germany, Montenegro, and the Netherlands, have proactively established both internal and external mechanisms to facilitate the reporting process for whistleblowers, demonstrating a commitment to fostering transparency and accountability. Each of these countries has tailored its approach to suit their specific contexts, with Montenegro introducing an internal procedure and a dedicated representative to address whistleblowing concerns, while the Netherlands has implemented specific organizational structures within the Ministry of Defence.

Disparities exist among member states regarding the presence of distinct provisions for military personnel compared to other public service employees. Some countries, including Germany, Malta, and Sweden, have chosen to implement such distinctions, recognizing the unique circumstances of military service. In contrast, Ireland presents a notable deviation from this pattern. While it acknowledges military personnel as distinct “office holders” rather than “employees” under the PDA 2014, this distinction has significant implications, as it results in military personnel not enjoying the same level of protections against penalization or threats of penalization for making protected disclosures. This differentiation runs contrary to the EU Whistleblowing Directive's objective of uniform protection for whistleblowers across member states.



CONCLUSION

Slovakia's legislation stands out for offering specific protections and entitlements explicitly for military personnel, further underlining the country's dedication to safeguarding whistleblowers within its armed forces.

However, it is crucial to note that certain member states have legislations that do not extend whistleblower safeguards to individuals reporting violations related to security and defence, as exemplified by Germany, Greece, Spain and Sweden. In these cases, exceptions related to essential state security interests are in place.

As EUROMIL, we strive to gather information from various member associations to establish a common platform, serving as a foundation for identifying best practices and enhancing members' ability to address the challenges and issues outlined in this report more effectively and efficiently.

By working together, we can continue to advance the protection of whistleblowers and uphold the principles of transparency, accountability, and integrity across the European Union.



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