

ETAF statement on the future evaluation of the Whistleblower Protection Directive

The European Tax Adviser Federation (ETAF) sincerely thanks the European Commission for this opportunity to provide input on its future evaluation of [Directive \(EU\) 2019/1937](#) on the protection of persons who report breaches of Union law (the “Whistleblower Protection Directive”), scheduled for the end of 2026.

The Directive, transposed into national law by Member States in 2021, sets minimum EU standards to ensure a high level of protection for individuals who report information on breaches of Union law that may harm the public interest in the context of their work. Private sector organisations, including accounting and tax firms, with 50 or more employees are notably required to establish internal reporting channels.

The evaluation, foreseen by the Directive itself, will examine whether the rules are functioning as intended and whether additional measures or amendments may be necessary. This includes a possible extension of the Directive’s scope to further acts or areas. It is our understanding that the assessment will follow the standard criteria: effectiveness, efficiency, relevance, coherence and EU added value.

As a preliminary remark, ETAF considers that the entry into force of the Whistleblower Directive has definitely strengthened ethical behaviour in commercial transactions and is likely to have had a positive preventive effect on the lawful conduct of economic operators.

We would like to focus our comments on a practical aspect of implementation: the translation and application of the legal term “*legal professional privilege*”, which currently undermines the coherence of the Directive.

The legal term “*legal professional privilege*” is firmly established in EU legislation and case law. It reflects the principle that legal professions subject to a statutory duty of professional secrecy may be exempted from certain statutory reporting obligations, where these would otherwise create a conflict between the duty to report and the duty to preserve client confidentiality. The Directive refers explicitly to this exception in Article 3(3)(b) and Recital 26 of the English version.

Different translations of the legal term “legal professional privilege” across Member States

The way in which “*legal professional privilege*” has been translated across Member States differs.

In Germany, for instance, the translation of the legal term “*legal professional privilege*” in the Whistleblower Directive, Article 3(2)(b), Recital 26, refers to “*attorney-client privilege*”, thereby restricting its applicability to lawyers alone and excluding other legal professions, such as tax advisers, who are also subject to statutory professional secrecy and perform legal advisory functions.

ETAF would like to outline that this approach does not sufficiently take into account the broader legal framework in that Member State, where tax advisers are legally recognised as independent legal professionals with comparable duties of confidentiality than lawyers.

Different implementation of the legal concept of “professional secrecy” in the Member States

A direct consequence of the above is that the legal concept of “*professional secrecy*” has been implemented differently in different Member States.

In Austria, for instance, where the legal term “*legal professional privilege*” has also been translated as “*attorney-client privilege*”, the concept of “*professional secrecy*” was nonetheless rightly extended to auditors and tax advisers when implementing the Whistleblower Directive (Section 3(6)(2) of the Austrian Whistleblower Protection Act).

By doing so, the Austrian legislature applied a teleological interpretation, aligning the Directive with its underlying purpose and the interests of the parties involved. In contrast, the German legislature relied solely on a grammatical interpretation, limiting the scope to the literal wording. This difference is especially noteworthy given that Austria’s professional legal framework for auditors and tax advisers is closely aligned with that of Germany.

The need for a uniform and coherent approach

These divergences have important implications. In ETAF Member States, tax advisers practise a legal advisory profession, are empowered to represent clients in tax matters and are bound by professional secrecy in the same way as lawyers. Excluding them from the exemption creates inconsistencies in protection and legal uncertainty across the EU.

A uniform translation and consistent application of “*legal professional privilege*” across Member States would enhance legal certainty and coherence of Union law. Adapting the language versions of the Directive to better reflect the intended scope — potentially by using a term such as “*duty of confidentiality of the legal professions*” — could help avoid misinterpretation and ensure equal treatment of legal professions across the EU.

In ETAF’s view, the upcoming evaluation of the Whistleblower Directive offers an excellent opportunity to address these issues, further harmonise the terminology and thereby strengthen both the consistency of EU legislation and the case law of the EU Court of Justice.

Reduction of bureaucracy

According to Articles 7 and 8 of the current Whistleblower Protection Directive, employers – and thus also tax advisory firms – with 50 or more employees are obliged to establish internal reporting channels and procedures. These channels must allow for oral, written or in-person reporting, requiring IT-based systems and/or external service providers as data-protection-compliant solutions, which creates significant bureaucratic burdens and high costs for companies.

As a general measure and in line with the von der Leyen Commission’s commitment to reduce bureaucracy, ETAF calls on the Commission to also consider, in the context of this evaluation, raising the threshold for establishing an internal reporting channel from 50 to at least 100 employees in order to relieve medium-sized companies from bureaucratic burdens.

Notes

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About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is set as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15th December 2015. It represents more than 220 000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.