TRANSPOSITION OF THE DIRECTIVE 2019/1937 - Winter 2020

Disclaimer: this document has been drafted based on the information available to the members of the Network of European Integrity and Whistleblowing Authorities (NEIWA) and is in no way meant as an official overview of the state of play in the different Member States concerning the transposition of the Directive 2019/1937. Also, as transposition is work in progress the information in this document may not reflect the actual state of play.

Netherlands

The Netherlands has started the process of the transposition of the Directive 2019/1937 already at the beginning of the year. The ministry of the Interior is responsible and started inter departmental consultations beginning of 2020. Following the interdepartmental consultations the draft law has been in public consultation until the beginning of September. The draft law may be amended following the public consultation and will thereafter be sent to the Council of State for its advice. The advice of the Dutch Council of State will have to be processed, after which the Dutch government sends the draft law to parliament. The Dutch Whistleblowing Authority has provided its input during the whole process and also [most specifically] in the public consultation. The Dutch Whistleblowing Authority has continuously informed the ministry of the Interior of the (relevant) outcomes of NEIWA and put it on its website too.

Ireland

Ireland has started the process of the transposition of the Directive 2019/1937 through public consultation. A previous public consultation process regarding reform of the Irish legislation was put on hold pending the Directive being issued. Ireland in June 2020 conducted a public consultation process surrounding the transposition and will also have a number of focus expert working groups. The Garda Ombudsman has been asked about legislative amendments. In January 2020 following the Paris meeting of NEIWA our legislators were approached and informed of the work of NEIWA, both declarations have been shared and are on our website and directly with the legislators. We have been invited to share information with our legislators and likewise have asked that they share information with GSOC. This in turn will provide an exchange of knowledge from a NEIWA perspective to the transposition process in Ireland. This work is continuing at this time.

France

France have not started officially the process of the transposition of the Directive 2019/1937. The Defender of Rights will nevertheless give an opinion on a new bill to be presented soon in the Parliament. In parallel, a Commission in the Parliament has been given the mission to assess the present legal framework on whistle-blowers protection. During the conference organised by the Defender of Rights in December the 3rd, -gathering some representatives of the parliament -, NEIWA not only was presented but also a number of members had the opportunity to present their institutional works. (Translation in English of the proceedings is ready)

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In **Spain** there are different regional offices;

Catalonia

The Anti-Fraud Office of Catalonia have outlined that the process of the transposition of the Directive 2019/1937 has commenced, but there has not been a public or private consultation at a Spanish level. In Catalonia, a Parliamentary Commission has summoned several experts to improve the draft legislative text and asking questions on how to improve the quality of the Law proposal regarding whistleblowers. At the Spanish level, several legislative initiatives have been submitted by Parliamentary groups. A working group was established in the General Codification Commission of the Ministry of Justice which plans to have a proposal by 2nd December 2020. Catalonia is currently working on a Law proposal. In June 2020 the Rome declaration approved by NEIWA was translated into Spanish and Catalan and distributed among the legislators (to the Parliamentary Commission in Catalonia, Presidency and Bureau) and to the Spanish legislator (Constitutional Commission and Presidency and Parliamentary groups Presidents).

Valencia

The Valencian Anti-fraud Agency have outlined that the process of the transposition of the Directive 2019/1937 has commenced The Spanish Law regulating the procedures for the approval of laws provides for the existence of such public consultation process, but this has not been done yet. The Valencian Anti-Fraud Agency (AVAF) has been interested in participating in that procedure, since it is the only institution in Spain that is protecting whistleblowers in accordance with Law 11/2016 approved in the Valencian Parliament, and there have been successes and difficulties. During the last legislature, several legislative initiatives have been presented by different political parties in Spain in the Congress of Deputies for the transposition of the Directive, but they have not been accepted. Currently, the Ministry of Justice has named a working group of experts, who have been commissioned to make a proposal for an articulated text before 2nd December, 2020. The Valencian Anti-fraud Agency have not been asked about the new legislation but have expresses its opinion and recommendations to people and institutions close to those who are preparing legislative initiatives, and also in different forums and working groups with other experts and civil organizations. It is also carried out through conferences and information echoed by the media. The Valencian Anti-fraud Agency have held a meeting with the president of the Commission for the Fight against Corruption and Institutional Reforms of the Congress of Deputies. The Valencian Anti-fraud Agency Activity Report of the year 2019 (page 162), sent to numerous Valencian and Spanish public bodies and available on their website, talks about NEIWA, in addition, they disseminate the Rome Declaration of June 26, 2020 publicly through the media and on their website.

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Belgium

The Belgian Federal Ombudsman

The Belgian Federal Ombudsman has outlined that the transposition of the Directive 2019/1937 has commenced along with a public consultation process. The federal public service (FPS) Policy and Support is tasked to coordinate the process for the federal public sector and the FPS Economy for the private sector. The University of Namur will analyze the possibilities and draft the transposition for the private sector under a procurement contract. Deadline for the output of their study is mid-January 2021. The federal public service (FPS) Policy and Support set up a steering committee and working groups (WG internal channel, WG external channel, WG integrity policy) with representatives of the various stakeholders. The Working groups are assisted by experts among which the federal ombudsman. The output of the steering group and workings groups is expected by the end of March 2021. To monitor the compatibility of the transposition for the private and the public sector reunions of concertation are planned. The federal ombudsman has raised the work of NEIWA through its annual report to the federal Parliament and on its website.

Flanders

Further to an initial consultation of all Flemish policy areas during the negotiation process, the preparation of the transposition of Directive 2019/1937 for the Flemish public and private sectors was initiated in 2019. Currently the focus of this exercise lays on the Flemish public sector as the private sector will be mainly covered by the transposition at the federal level. The future Flemish approach and legislation is being prepared by a working group which consists of the department of the Chancellery and Foreign Affairs, the Agency for Home Affairs, the Agency for Government Personnel, Audit Flanders as well as the Flemish Ombudsman Service. Other sectoral policy areas for which Flanders has competencies (e.g. environment) will be involved in the near future. The working group aims to finalize a note including an outline for the necessary transposition to be submitted to the Minister responsible for Public Governance before the end of the year. The drafting of texts should start early 2021 – after feedback from the concerned cabinet – in order to finish the legislative process by the transposition date at the end of 2021.

Czech Republic

The Ministry of Justice of the Czech Republic, Conflict of Interests and Anti-Corruption Department have outlined that the transposition of the Directive 2019/1937 has commenced along with a public consultation process. The Bill on Protection of Whistleblowers has been circulated for interdepartmental comment procedure on June 30, 2020 and points of comment review the bill from different legal perspectives. The Ministry of Justice of the Czech Republic have been asked about

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legislative amendments.

Finland

The Ministry of Justice, Finland has outlined that the transposition of the Directive 2019/1937 has commenced along with a public consultation process. In Finland two working groups have been established to prepare the future legislation on implementation of the directive. Deadline for both groups is 31 March 2021. In the working groups all relevant and the most important ministries and labour unions are represented. Official consultation will take place next year when the draft law is ready. Earlier the draft directive was taken into the Parliament for their information and public and private sectors were asked for their comments to the (draft) Directive. Several remarks were made. The Ministry of Justice is preparing the future legislation and at the same time represented in NEIWA.

Greece

The National Transparency Authority has outlined that the transposition of the Directive 2019/1937 has commenced but as yet no public consultation process has begun. Establishment of a Legislative Drafting Committee assigned with the task to transpose the Directive into the national legal framework. Representatives of the National Transparency Authority are among the members of the Committee. The National Transparency Authority have been asked about the new legislation and have members of Legislative Drafting Committee about NEIWA's initiatives.

Lithuania

The Prosecutor General's Office of the Republic of Lithuania have outlined that that the transposition of the Directive 2019/1937 has commenced along with a public consultation process. The country began the process of the transposition of the Directive in two levels both national and international. The institution responsible for the transposition in Lithuania is the Ministry of Justice. They had one meeting in Europe Commission already. The other one is planned on 29th of September 2020. The General Prosecutor Office received a request from the Ministry of Justice to give their opinion about the Directive transposition process and opinions about the legislative amendments were made. As part of a meeting about the new legislation they had a meeting with an officer from the Ministry of Justice in January 2020. They discussed the processes of the transposition of the Directive. One of the discussed questions was about the work of NEIWA and that Lithuania is a part of this organisation and has the possibility to share the best practice about the whistleblowing processes with other countries, the main aspects of the Paris declaration were discussed.

Hungary

The Department for the Protection of Public Interest and Client Service, in the Office of the

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Commissioner for Fundamental Rights have outlined that that the transposition of the Directive 2019/1937 has commenced along with a public consultation process. The Office of the Commissioner for Fundamental Rights does not have any information about the actions taken yet because the Ministry of Justice is responsible for the transposition of the Directive. The consultation between the Office of the Commissioner for Fundamental Rights and the Ministry of Justice has been started recently. At the session of the Parliament on 4th of November, the Ombudsman reported on the activities of the Commissioner for Fundamental Rights and his deputies in 2019, of which NEIWA's work in the field of whistleblower protection in the public interest is prominent. Beyond all that the chapter on international relations in the ombudsman's report dealt with activities related to NEIWA.

Portugal

In Portugal, the Ministry of Justice is the public organism responsible for producing the legislative proposal of the Directive transposition. That final proposal, before being approved by Parliament, will be at the PGR (General's Prosecution Office) disposal for consult. The procedure of transposition has already started and will be concluded in December 2020. In spite of the production of a future legislation proposal, concerning specifically the directive transposition, in September 2020, it was released by the Portuguese Ministry of Justice a proposal of legislation concerning Corruption and Economical Crime Prevention and Repression, in which there were included several legal norms regarding whistleblowing and the Directive (EU) 2019/1937.

The ***National Strategy to Combat Corruption*** (NSCC) for the period 2020-2024 was under public discussion (September/October 2020)**.** Late November 2020, there was a conferente for analysis and discussion of the main issues raised by the participating citizens and institutions during the public consultation. In a public statement, the Minister of Justice "recognized that the Strategy contains the 'sin' of having been prepared by lawyers, but the dialogue with other areas, made possible thanks to the public consultation process, demonstrated the need to consider new perspectives and other approaches and evaluation tools". According to Government, after the conference, the Council of Ministers will revisit the text of the NSCC and consider the contributions presented, defining the next steps in terms of the discussion and institutional implementation of the conference and of any proposals for legislative changes. The transposition of the Whitleblower Directive is specifically mentioned in the NSCC version that was under public assessment: it will establish the general legal regime for the protection of whistleblowers, encompassing and articulating it with current whistleblower rules. The strategy mentions envisages establishing a "Independent Corruption Prevention Mechanism" specialized and exclusively dedicated to the development anti-corruption policies, with initiative, control and sanctioning powers, but does not mention the solution to be adopted regarding the W. D.

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Latvia

The office of the State Chancellery Republic of Latvia, Department for Public Administration Policy have outlined that the transposition of the Directive 2019/1937 has commenced along with a consultation process The State Chancellery is in charge of transposing the Directive into their Whistleblowing Law. The State Chancellery has elaborated draft amendments of the Whistleblowing Law and the initial impact assessment. According to regulation on public participation, these documents were posted on their website mk.gov.lv for comments from the public (with a notification on the participation process). However only a few comments were received. Further, on 6 August, draft legal act "Amendments to the Whistleblowing Law" was announced and introduced at the State Secretaries' meeting. In August 2020, the draft opened for comments from public institutions and members of the public too can continue submitting comment. They are reviewing all this initial set of opinions in September-October 2020, then official inter-ministerial consultation process (public and private consultation) over the amendments to the Whistleblowing Law will take place, involving bilateral/thematic talks with the Ministry of Justice and Ministry of Foreign Affairs and possibly other key partners, inter-ministerial meetings and a Conference ~~in~~ on 5-6 November 2020. In October they will approach the Parliament to invite to participate in the Conference in November and inform about ongoing transposition of the Directive, as well as about NEIWA and its work.

Romania

The Romanian Ministry of Justice, have outlined that the transposition of the Directive 2019/1937 has commenced along with a consultation process. An internal analysis on the transposition of the Directive was carried out at the level of the Ministry of Justice, with a view to identify possible

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legislative solutions. Initial consultations were initiated with a series of national institutions. During this process questions have been asked about what support measures for reporting persons should Romania provide, what mechanisms might be used to provide such support, what is the institution designated as the external reporting channel and what penalties should be imposed under the Art. 23 of the Directive. A public consultation will also take place. In Romania, the Ministry of Justice has assumed the transposition of the Directive. As a member of NEIWA, Ministry of Justice published the Rome Declaration and information about NEIWA on the National Anticorruption Strategy dedicated website (sna.just.ro).

Croatia

The Office of the Ombudswoman have outlined that the transposition of the Directive 2019/1937 has commenced but as yet a public or private consultation process has not yet started. The Office of the Ombudswoman has unofficially learned that the process of transposition has begun. But, no meeting with the Ministry of Justice has taken place yet, nor do they have any information that any working group has been established or that another form of consultation with relevant stakeholders has started. The Office of the Ombudswoman publicly announced on their website that they have joined NEIWA and they have published texts of the Rome and Paris Declarations.

Italy

The Italian Ministry of Justice is responsible for the transposition. Although it appears that a committee was created by the Ministry early this year, ANAC has not received information or invitation in that regard. ANAC will keep requesting such invitation. A committee for the transposition of the Directive has been established at the Ministry for European Policies. The first meeting in September was attended by the representatives of other Ministries (Justice, Public Administration etc.). ANAC was not invited. Apparently, ANAC will be invited to the next meeting. In the meantime, the Ministry of Justice's representative contacted me for help with the first draft of the new legislation, which I commented.

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