



la MAISON
des LANCEURS
d'ALERTE

PUBLICISING ~AN ALERT~



CORRUPTION

MEDIA COVERAGE FOR
JOURNALISTS & WHISTLEBLOWERS

Strategic lawsuit against
public participation (SLAPPs)

OMERTA



The Maison des Lanceurs d'Alerte (MLA) is a non-profit organisation created by 17 organisations and unions on 22 October 2018 under France's 1901 law to provide support to whistleblowers and improve their protection rights. Since its creation, our organisation has provided support to more than 400 whistleblowers and has developed significant expertise on the right to raise the alarm in France.

Acknowledgements

The Maison des Lanceurs d'Alerte would like to warmly thank all the journalists that took part in our data collection, who agreed to share their experience by providing precious insight into the situation on the ground. Their commitment provides us with a better understanding of the challenges related to the protection of journalistic sources and the freedom of information. We would also like to thank our proofreading committee – **Reporters without Borders**, **SNJ** (National Union of Journalists), **SNJ-CGT** (National Union of Journalists - French General Confederation of Labour), **CFDT Journalists** (French Democratic Federation of Labour Journalist trade union) and **Sherpa**.

PUBLICISING AN ALERT. MEDIA COVERAGE FOR JOURNALISTS AND WHISTLEBLOWERS.

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ABBREVIATIONS

AGS	Association pour la gestion du régime de Garantie des créances des Salariés (Wage Guarantee Insurance Association)
ANSSI	Agence nationale de la sécurité des systèmes d'information (French National Agency for the Security of Information Systems)
ECHR	European Court of Human Rights
CNIL	Commission nationale de l'informatique et des libertés (National Commission on Informatics and Liberty)
CPP	Code de procédure pénale (French code of criminal procedure)
DDD	Défenseur des droits (Defender of Rights authority)
DGCCRF	Direction générale de la concurrence, de la consommation et de la répression des fraudes (Directorate-General for Competition, Consumer Affairs and the Punishment of Fraud)
DGEFP	Délégation générale à l'emploi et à la formation professionnelle (General Delegation for Employment and Vocational Training)
EGPI	États généraux de la Presse Indépendante (Assembly of the independent press)
EMFA	European Media Freedom Act
EFJ	European Federation of Journalists
INHESJ	Institut français des hautes études de la sécurité et de la justice (Institute of Advanced Security and Justice Studies)
IPIP	The overriding requirement for public interest
IWMF	International Women's Media Fund
JLD	Magistrate for custody and release
LPLA	Loi sur la protection des lanceurs d'alerte au sein de l'État (Law on the Protection of Whistleblowers within the State of Geneva)
LVMH	Louis Vuitton-Moët-Hennessy
MLA	the Maison des Lanceurs d'Alerte
OECD	Organisation for Economic Co-operation and Development
NGO	Non-governmental organisation
CEO	Chief executive officer
SME	Small and medium-sized enterprises
RSF	Reporters Sans Frontières (Reporters Without Borders)
SLAPPS	Strategic Lawsuits Against Public Participation
EU	European Union
UNESCO	United Nations Educational, Scientific and Cultural Organisation



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editorial

Journalists and whistleblowers, essential contributors to democracy and freedom.

Mediator scandal: the Servier drug, that caused the deaths of 1500 to 2000 people in France, not including those who continue to suffer from the side-effects.

Swiss bank UBS tax evasion scandal: this allowed the French tax authorities to recover EUR 1.8 billion.

Nuclear test scandal: The French books *"L'héritage de la bombe"* ("The legacy of the bomb") and *"Les irradiés de la République"* ("The Republic's irradiated people"), only available in FR) describe the consequences of nuclear testing in the Algerian Sahara and in French Polynesia on the local population and the personnel who carried out the tests.

If it weren't for the whistleblowers Irène Frachon, Stéphanie Gibaud and Bruno Barrillot, no one would have been told of this information of public interest.

As for Antoine Deltour and Raphaël Halet, an auditor and personal assistant at PWC, and Edouard Perrin, a reporter at Cash Investigation; they are proof that cooperation between whistleblowers and journalists can be productive. Broadcast in May 2012 on France 2, the programme denounced the *"Luxembourg Leaks"*, commonly referred to as Luxleaks. This scandal raised awareness on the tax evasion methods companies use. It perfectly illustrates the risks taken by whistleblowers and, to a lesser extent, the journalist. Investigated, charged, then acquitted. The three men faced inherent reprisals given the scale of these revelations. The price to pay for whistleblowers is all too often exorbitant: dismissal, ruined career, sidelined professionally, legal proceedings, impact on personal and family life, etc. Yet, these examples illustrate the courage of these whistleblowers, whose testimonies, together with the information and documents published by the press fuel public debate, leading to

investigations, trials and sentencing, parliamentary investigations, and new legislation. For over 15 years, they have come forward in increasing numbers, putting French and international company practices into question. One such example is Sophie Rollet, the widow of a driver killed in a road accident caused by a burst tyre, who is taking on the multinational company Goodyear; and Karim Ben Ali, a driver who filmed himself following orders from the steel giant ArcelorMittal when dumping acid directly onto the ground. These are lives that are turned upside down and sometimes destroyed. In fact, they are some of the heroes of the 21st Century.

This guide is the result of a partnership between the Maison des Lanceurs d'Alerte and UNESCO, with funding from their *"Global Media Defence Fund"*. The aim of this guide is to inform French, Belgian and Swiss journalists of the legal definition of a whistleblower, on the laws that govern their activities, how they operate, and their constraints. Its role is to also raise awareness regarding the methods to use and the precautions required when collaborating with whistleblowers or more simply put, when they use information, data or documents provided by a whistleblower. And finally, it outlines the authorities that are useful in the event of whistleblowing, the dangers of SLAPP suits and the protection that journalists and whistleblowers may benefit from...as well as the limits thereof.

The intention of this document is to contribute to the successful work and understanding between whistleblowers and journalists. This is a fundamental challenge: to encourage the exposure of information of general interest with potential considerable consequences. Information that, without this cooperation, would remain unknown to the public, the law or political powers. It is a challenge for democracy and freedom.

Dominique Pradalié,
journalist and President of the International
Federation of Journalists

INTRODUCTION..... (7)

01. UNDERSTANDING THE LEGAL FRAMEWORK BETTER..... (13)

1. In Europe	(14)
a. The protection of journalistic sources.....	(14)
Council of Europe and European Court of Human Rights.....	(14)
European Union.....	(15)
b. The protection of whistleblowers.....	(16)
European Council and European Court of Human Rights (ECHR).....	(16)
European Union.....	(17)
c. Protection against SLAPPs.....	(19)
2. In France	(21)
a. The protection of journalistic sources.....	(21)
b. The protection of whistleblowers.....	(22)
3. In Belgium	(24)
The protection of journalistic sources.....	(24)
The protection of whistleblowers.....	(24)
4. In Switzerland	(25)
a. The protection of journalistic sources.....	(25)
b. The protection of whistleblowers.....	(25)

02. THE RELATIONSHIP BETWEEN A JOURNALIST AND WHISTLEBLOWER..... (27)

1. As a journalist, what should I do when a whistleblower contacts me?	(28)
I make sure that initial contact is secure.....	(28)
I verify information without exposing the source.....	(29)
I explain my role as a journalist.....	(29)
2. As a whistleblower, how should I choose which journalists to contact?	(30)
I define a media strategy.....	(30)
I choose a media outlet/journalist.....	(30)
3. As a whistleblower, how do I contact a journalist for the first time?	(32)

03. PROTECT OTHERS (AND PROTECT YOURSELF)..... (35)

1. As a journalist, I should be aware of the risks to my source	(36)
I assess the risks for each investigation.....	(36)
I am aware of the risks that the whistleblower may be exposed to when sharing information.....	(36)
2. As a journalist, I am aware of the risks I am taking	(38)
The legal framework for combating cyberbullying.....	(39)
3. As a journalist, I redirect the whistleblower to the competent authorities and organisations	(42)
4. Journalists and whistleblowers, I must respect public disclosure deadlines	(42)
In France.....	(42)
In Belgium.....	(45)
In Switzerland.....	(47)

04. WORKING HAND IN HAND TO REVEAL THE TRUTH (49)

- 1. As a whistleblower, I am respectful of the different stages of the investigation (50)
 - I transfer all the elements in my possession (50)
 - I will be patient if the investigation takes time (50)
- 2. As a journalist, I remain vigilant throughout my investigation (51)
 - I maintain confidentiality in my story (51)
 - I ensure anonymity when requested (51)
 - I make sure my story is proofread (51)

05. PUBLICATION (53)

- 1. As a journalist, I will only publish my story if everything is ready and choose the most suitable time to go public (54)
 - In the event of delay, I will update the whistleblower (54)
- 2. As a whistleblower, I am prepared to receive interview requests (54)
- 3. As a whistleblower, I remain calm under pressure (57)
 - 1. I wasn't contacted once my story had been published (57)
 - 2. Going public did not solve the issue I was exposing (57)
 - 3. I was not prepared media (over)exposure (57)
 - 4. My identity was revealed when I wanted to remain anonymous (57)

06. RESPONDING TO THREATS OR LAWSUITS (59)

- 1. As a journalist or whistleblower, I am aware of the conditions of a SLAPP suit (60)
 - What is a SLAPP suit (60)
 - What the law says... for now (61)
 - Examples of SLAPP suits (62)
- 2. As a journalist, I am at risk of being threatened during my investigation (64)
 - I turn to my publisher (64)
 - I do not overlook the psychological impacts these threats may have on my mental health (65)

#10 GOLDEN RULES FOR WORKING WITH A WHISTLEBLOWER (66)

ANNEXES (69)

- Activity sectors covered by the 2019 European Directive (70)
- Who does the 2019 European Directive apply to? (71)
- Trade secrets in France (73)
- The competent external authorities in France (74)
- Non-decree regulatory authorities in France (77)

PRACTICAL GUIDES (79)

- Procedures for referral of competent authorities in France (80)
- Procedures for contacting the French Defender of Rights (81)
- Procedure for contacting the CNIL in France (82)
- Procedure for contacting the ANSSI in France (83)
- Defamation in France (84)
- Rights in police custody in France (85)



Despite the information provided in this guide, the procedures remain highly complex and fraught with risks. Therefore, we advise you to be supported by a legal professional throughout the process, and not to remain on your own.

introduction

Created in 2018 on the initiative of 17 organisations and unions, the objective of the **Maison des Lanceurs d'Alerte (MLA)** is to provide support and improve the protection of whistleblowers. Since 2018, over 400 people have been recognised as requiring the status of whistleblower and have gained support from the Maison des Lanceurs d'Alerte in areas including corruption, institutional abuse, health risks, environmental breaches, personal data protection, police violence, etc. Even though the Maison des Lanceurs d'Alerte is based in France, it provides assistance to any person who raises an alert that can be addressed under French law.

The Maison des Lanceurs d'Alerte is also working to mobilise political leaders and public opinion to bring about change in legislation to improve protection. In 2021, the Maison des Lanceurs d'Alerte was a key player in the mobilisation and implementation of ambitious legislation to improve the protection for whistleblowers in France. This is known as the Wasserman law. It aims to improve existing alert measures and protection against reprisals. Today, ongoing attention is still required to improve the efficiency and accessibility of protection and support methods for whistleblowers.

Lastly, the Maison des Lanceurs d'Alerte is committed to training and mobilising individuals who alert, and who have a fundamental role to play in the whistleblower experience: legal professionals, unions, journalists, etc.

This guide is a continuation of the initiatives put in place by the MLA: better equip those without whom the report and its consequences would remain forever unknown to the public. We hope to not only assist journalists based in France, Switzerland and Belgium, or who work for a press agency whose headquarters are located in one of these countries with just their own protection, but with the protection of their sources and the whistleblowers they may work with. This work was made possible thanks to funding from the United Nations

Education, Scientific and Cultural Organisation (UNESCO), which has long been committed to reinforcing legal protection for journalists and improving the freedom of the media via their Global Media Defence Fund.

The fundamental role of journalists and whistleblowers in keeping democracy alive

Question, examine, investigate. It is in recognising dissenting voices that we can identify a democracy that is alive and well. The investigative work of journalists and the revelations of whistleblowers contribute in practice to strengthening the foundations of a democratic system, and as such, correcting its pitfalls.

By making reliable, sourced and verified information public, thanks to an alert raised by ordinary citizens driven by the need for justice, respect of the law and defence of public interest, journalists play an essential role for whistleblowers. Media coverage means that reports are not ignored, that crimes, offences, threats or harm to the public interest committed by a company, a public or private entity or an administration, are not hidden the public or go unpunished by the courts.

Journalists are essential to whistleblowers: publishing their report in the press without following the correct procedures outlined by the law would deprive them of protection.

This is why the Maison des Lanceurs d'Alerte is concerned about the **general lack of knowledge on the legal protection available for whistleblowers.** This observation can be explained by current legislation, but also more generally by the weakness of the *"whistleblowing culture"*, meaning the practices and discourse that normalise and encourage whistleblowing.

A whistleblower. A new legal status in Europe, essential knowledge for journalists

Although the term *whistleblower* is often used in common parlance to refer to journalists, activists, or lawyers, the legal definition of this term has been clarified over time and a number of criteria have been added. Inspired by the Anglo-Saxon term *whistleblowing* (which literally refers to blowing the whistle), the legal beginnings in the United States can be found in the False Claims Act of 1863, a federal law passed by Abraham Lincoln targeting fraud and corruption in the army. In 1939, the Whistleblower Protection Act granted specific protection to the employees of the United States federal government, in particular against reprisals from federal agencies. *Whistleblowing is defined as "the disclosure by an organization's members (former or current) of illegal, immoral, or illegitimate practices, carried out under the control of their employers, to persons or organizations that may be able to affect action"* (Janet P. Near et Marcia P. Miceli, 1985) ⁰¹.

The French term for whistleblower ("*lanceur d'alerte*") was coined by Francis Chateauraynaud in January 1996. Although the French sociologist aims to distinguish between the reporter, who publicises "*illegal acts*", and the whistleblower, who works to "*anticipate threats or risks that can be avoided by reacting to warning signs*", unlike the Anglo-Saxons, popular culture still very often associates the two.

Yet, sounding the alarm should be considered an act of citizenship above all else. Where public authorities cannot control everything, where they sometimes mislead themselves, **whistleblowers act as watchdogs for our democracy**. Warning of health crises, environmental damage, exposing embezzlement of public funds or illegal acquisition, etc. They sound the alarm when the general interest is under threat.

It wasn't until the 2000s that European countries started to consider measures to protect whistleblowers. The law of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as the Sapin II law, marks the first attempt to establish a general system of protection for whistleblowers. The Mai-

son des Lanceurs d'Alerte's legal activities were bound by this law until 2022. We are now able to highlight the shortfalls. In Belgium, legislation was lacking until 2022.

2022 was the year that the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union Law was transposed. This directive sets out minimum standards of protection for European Union Member States, who are obliged to implement them into the national legislation. In Switzerland, where the European directive does not apply, no protection is provided at national level.

These recent transpositions are not sufficient enough to establish an exhaustive overview of the situation for whistleblowers in France and Belgium, but **it has to be said that in practice, the situation has not changed as much as had been hoped with the adoption of these laws**. Judges still show some reluctance when addressing the issue: yet their role is essential because the courts have the final say on whether the status is recognised - whereas the Defender of Rights simply gives their opinion.

A situation that is of increasing concern for the freedom of the press

The situation has never been so bleak for the freedom of the press. At a time where disinformation is of major concern, where the feeling of mistrust towards the media is exponential, where the unregulated use of AI is undermining people's trust and where politicians themselves are attacking the quality of journalism, it is necessary now more than ever to defend the freedom of the press, the right to inform, and journalists' ability to do their work under good conditions.

Furthermore, the economic situation in the media sector is not exactly perfect. In France, Belgium and, in Switzerland, the geographical area of our study, the situation is very similar: concentration of the media and takeover by large groups or bil-

⁰¹ Near, J.P., et M.P. Miceli 1985, *Organizational Dissidence : The Case of Whistleblowing*, *Journal of Business Ethics*, 4 : 1, 1-16

lionaires with ideological views, a decrease or suppression of broadcasting licensing fees and public grants, lack of long-term funding (relying on advertisements or subscriptions), etc.

In their report published in 2024, Reporters Without Borders ranked Switzerland 9th, Belgium 16th and France 21st respectively in their World Press Freedom Index ranking.

France: a growing concern regarding the state of the press

While the protection of sources is enshrined in the law of 1881 as one of the “*basic conditions for press freedom*” by the European Court of Human Rights (ECHR), the emblematic 2023 case of Ariane Lavril-leux, a reporter from Disclose, who was detained for 39 hours in an attempt to identify her sources, adds to the increasingly worrying attack on the freedom of the press.

On the one hand, we have a **group of press institutions that are controlled by a handful of businesspeople, whose brutal methods of intervention are extremely concerning** (Vincent Bolloré, the owner of CNews, Paris Match, Europe 1, Le Journal du Dimanche, Canal +; Bernard Arnault, the owner of the LVMH group, etc.) On the other, according to Reporters Without Borders, **the “press freedom around the world is being threatened by the very people who should be its guarantors – political authorities”**. A rise in legal proceedings that increasingly bypass the rights of the press, journalists detained for doing their job... The attitude of the public authorities towards journalists is a threat to the freedom of the press. As Reporters Without Borders reminds us, France sees its “*mechanisms aimed at combating conflicts of interest in the media and protecting the confidentiality of sources [are] insufficient, inadequate, and outdated*”⁰².

Furthermore, as outlined by the French President, Emmanuel Macron (and steered by an independent committee to collectively review the challenges of journalism), **the États généraux de l'information (EGI - Information Assembly), initiated in October 2023, disappointed with un-**

successful proposals, in particular relating to the independence of editorial offices from shareholders, the lack of a proposal to implement a “*right for approval*” for journalists on the nomination of their editorial director, and, moreover, the absence of concrete action.

In response, over 100 media outlets, organisations and groups, including the Maison des Lanceurs d'Alerte, organised a “*Etats généraux de la Presse Indépendante (EGPI - Independent Press Assembly) at the initiative of the Fonds pour une Presse Libre (Free Press Fund)*”. This approach has provided an opportunity to reflect on how to free “the news from political powers, hate media and billionaires”, while addressing the issue of the state and the future of the profession. The mobilisation of the independent media during the early July 2024 parliamentary elections, as well as an impressive number of initiatives, are testament of the **incredible determination and battles that the French press is not about to give up on**.

Belgium⁰³: the growing feeling of defiance in the press sector is also growing in Belgium.

À Like their French neighbours, journalists have been faced with threats and intimidation, both online or when they have been working in the field. Early censorship by the court (later thrown out on appeal in 2023) of a Flemish media outlet on their story involving Conner Rousseau, the former chairman of Vooruit, the Flemish socialist party, caused quite a stir.

Even though there is no major press law in Belgium, it has recourse to significant legislative and constitutional guarantees. The confidentiality of sources has been protected by federal law since 2005, and the national Ethics Council is a tool that enforces effective editorial regulation. In contrast, defamation is still a criminal offence under Belgian law.

Two large groups dominate the Belgian press sector: IPM (La Libre, L'Avenir, DH, LN24) and Rossel (Le Soir, Sudinfo, L'Echo and Metro).

⁰² <https://rsf.org/en/country/france>

Switzerland ⁰⁴: the political system is still against improving legal measures relating to the rights of the press

While Switzerland provides a very safe and protective environment for reporters, there are two major concerns within the profession.

The legal framework has historically not been conducive to the freedom of the press. As a result, in 2022, the federal Parliament approved a strengthening of “provisional measures”, allowing the courts to block or remove journalistic content on the request of a company, entrepreneur, or politician, on the grounds of damage to their reputation. **Criminalising the dissemination of information covered by banking secrecy** is another legal obstacle to the freedom of the press. This statutory provision had discouraged the Swiss media from getting involved in SwissLeaks in 2015, when an international tax evasion scheme was revealed to the world.

The media’s economy represents another significant challenge for the profession. While the Swiss press has historically been one of the most diverse in the world (in particular due to the fact that it is divided into three small language markets, which limits its ability to expand), its development has been hindered by the digital revolution that has led to restructuring and staff cuts. One of the consequences is the **disappearance of media outlets, or takeovers by large groups that dominate the market**, especially in the local press. The Swiss media market is dominated by two large editorial groups: TX group AG (Tamedia) and Ringier, both headquartered in Zurich. NZZ and AZ Medien, and their joint venture CH Media, are also major players in the sector. Unlike what is happening among their European neighbours, only one Swiss media company was bought out in 2006. The takeover of *Die Weltwoche* was funded by the billionaire and conservative right-wing politician, Christoph Blocher.

Lastly, public funding is lacking for the media sector (audiovisual media is the exception); and what’s worse, proposals to reduce the amount of licensing fees are all the rage.

The fight against SLAPP suits has already begun.

While the current political context is conducive to the multiple violations of the freedom of the press, as data gathered by the *Media Freedom Rapid Response* ⁰⁵, demonstrated, **cases of violations of the law on the freedom of the press are more and more common in the courts.** Proof of this is the number of cases that have been made against journalists in recent years.

Whether political or economic, pressure on the press is nothing new. Investigative work is a problem for those in positions of power, especially when the press is doing its main job: making them accountable. What is making a major difference today is the **increasing number of so-called SLAPP suits**, i.e. the legal measures being used by companies and institutions, seeking to prevent or sanction statements that may harm them. **This process of “silencing” involves extensive legal procedures that are costly not only financially, but also in terms of time and energy.**

In seeking to better protect journalists, but also the NGOs and whistleblowers that fall victim to these practices, the **European directive against SLAPPs, adopted on 11 April 2024, has allowed Member States to take the situation seriously.** The crucial challenge nowadays is successfully transposing this directive into national law. An ambitious implementation in particular that we are seeking to protect from the pressure of lobbying, which became increasingly aggressive in 2022.

Through this guide, **the Maison des Lanceurs d’Alerte seeks to share experience of collaboration between journalists and whistleblowers, as well as some best practices.** Our advice is aimed at both parties, outlining both sides of this teamwork. Understanding the legal framework is the first step. Even though this may seem complex

⁰³ <https://rsf.org/en/country/belgium>

⁰⁴ <https://rsf.org/en/country/switzerland>

⁰⁵ www.mfrr.eu

and tedious, knowing and promoting the rights of whistleblowers helps ensure their protection. From making first contact to establishing a relationship of trust, including putting protection measures in place (analysing the risks taken by both parties, advising on legal assistance where necessary, respecting public disclosure timelines), this guide outlines the different stages leading up to final publication. Even though, as we have mentioned, the fight against SLAPPs has not yet been transposed into national law (which entails a mobilisation of the public to demand transposition takes place as soon as possible), the last part covers some courses of action and precautions that can be taken. Finally, it is worth having a look at the annexes. They include details on the 2019 European Directive and on the 2022 Wasserman law, as well as practical information on referring cases to the competent authorities.





This section aims to present an overview of the provisions that could be invoked by journalists or whistle-blowers, when faced with a SLAPP ⁰⁶ or other procedures aimed at intimidating them, as a result of their alert or public disclosure.

⁰⁶ See definition page 19.

01.



Understanding the legal framework better

①

In Europe
(14)

②

In France
(21)

③

In Belgium
(24)

④

In Switzerland
(25)

1. In Europe

The laws of the European Union and Council of the European Union supersede national legislation in European Union Member States. This means that they override national laws and prevail over French and Belgian law. As Switzerland is not a member of the European Union, the Council of Europe's fundamental texts and case-law can be used.

A look at the foundations of European texts also gives us a better understanding of how certain European directives and national legislation were adopted.



WHY IS IT RELEVANT TO KNOW AND REFER TO EUROPEAN LAW?

- It is possible to refer to European law and case law during proceedings before national courts.
- If all legal remedies have been exhausted at national level and you have not prevailed in court, you may refer the case to the European Court of Human Rights (ECHR) on the basis of Article 10 of the Convention.

a. The protection of journalistic sources

The **protection of journalists' sources** is a fundamental principle of freedom of the press and freedom of expression. It refers to the **right of journalists not to disclose the identity of their sources of information**. This principle is crucial to ensuring that sources can disclose information of public interest without fear of reprisal or prosecution.

From a legal perspective, the protection of sources is governed by various international instruments, national regulations, and jurisprudence. The gathering of journalistic information presupposes a principle of free access to information sources but also the protection of these sources by international, European and national law.

At an international level, the protection of journalistic sources is generally considered to be an **essential element of freedom of expression**, as enshrined in article 19 of the Universal Declaration of Human Rights of 1948 and article 19 of the International Covenant on Civil and Political Rights, which includes the freedom to seek, receive and impart information without interference.

Nevertheless, the recognition and legal protection of source confidentiality **varies by jurisdiction**, and journalists often have to navigate complex and sometimes hostile legal environments.

Council of Europe and European Court of Human Rights ⁰⁷

At the Council of Europe level, the protection of journalistic sources is guaranteed by:

- **Article 10 of the European Convention on Human Rights**
- **Case law of the European Court of Human Rights**

According to **Article 10 of the European Convention on Human Rights**, **everyone has the right to freedom of expression**, and this right includes freedom of opinion and freedom to receive or communicate information or ideas without interference from public authorities and regardless of borders. This article is often invoked in cases related to the protection of journalistic sources.

In its case law, the European Court of Human Rights has identified several criteria for determining the legality of an infringement of this principle:

- The existence of an overriding requirement for public interest
- The need for the infringement
- La proportionnalité de l'atteinte

⁰⁷ The Council of Europe is an international organisation independent of the European Union, with its own institutions and functioning. Founded in 1949, it now comprises 46 European countries and aims to defend Human Rights and democracy: www.coe.int/fr/web/portal/the-council-of-europe-at-a-glance
In the event of a violation of fundamental, civil and political rights, natural and legal persons present under its jurisdiction may refer to the European Court of Human Rights (ECHR): www.echr.coe.int/fr/home



“THE OVERRIDING REQUIREMENT FOR PUBLIC INTEREST”, A VARIABLE-GEOMETRY DEFINITION

In the founding decision of *Goodwin v. the United Kingdom* of 27 March 1996⁰⁸, the Court explicitly stated that the protection of journalistic sources was “one of the basic conditions for press freedom,” and that any interference with that protection should be justified by a “overriding requirement in public interest.”⁰⁹ ».

According to the case law, an overriding requirement for public interest must meet three conditions: to be provided for by law (the principle of legality), to pursue a legitimate objective such as the protection of national security, public order, or the rights of others, and to be necessary in a democratic society, that is to respond to an overriding social need and to remain proportionate to the desired goal.

However, these criteria remain insufficiently defined and are subject to legal variations (susceptible to political and judicial context), leaving room for interpretation that could undermine the protection of journalistic sources and, more broadly, freedom of expression.

Recommendation No. R (2000)7 of the Committee of Ministers to Member States, on the right of journalists not to disclose their sources of information of 8 March 2000, recalls that the free and unhindered exercise of journalism is enshrined in the right to freedom of expression and is a fundamental prerequisite to the right of the public to be informed of matters of public concern. Protecting journalistic sources is an essential condition for journalists to work freely, and for the freedom of the media.

European Union

Within the European Union, **Article 11 of the Charter of Fundamental Rights of the European Union** is devoted to the freedom of expression.

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
2. *The freedom and pluralism of the media shall be respected.*

A new step was recently taken towards ensuring the freedom of the media in the EU. Indeed, MEPs adopted the “European Media Freedom Act” (**known as EMFA**) on March 13, 2024, after an agreement was reached the end of 2023.

- ✓ This draft regulation was presented by the European Commission in September 2022, with the aim of protecting pluralism and the independence of the media, particularly given the deteriorating situation in Hungary and Poland, but also due to the use of spyware programmes such as *Predator* and *Pegasus* to spy on journalists¹⁰.

⁰⁸ ECHR, GC, 27 March 1996, *Goodwin v. United Kingdom*, req. No. 17488/90: <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=002-9515&filename=CEDH.pdf>

⁰⁹ See: ECHR, 27 Nov 2007, *Tillack c. Belgique et CEDH*, GC, 14 Sep 2010, *Sanoma Uitgevers B. V. v. the Netherlands*.

¹⁰ Le Monde and AFP, Une « *lan EU “Freedom of the Media Act” to protect journalists and combat political interference, was voted on by Parliament*, 13 march 2024.

- ✓ Amongst other things, the text covers respect for the confidentiality of journalistic sources. Journalists and editors can no longer be obliged to disclose their sources unless legally required to do so for an “*overriding reason of public interest*,” and comply with the principle of proportionality of the measure infringing the secrecy of sources.

The European Media Freedom Act shall apply as of 8 August 2025.

However, the Act has several exceptions and derogations. According to the European Federation of journalists (EFJ), the text does not go far enough. The protection of journalists and their sources should be increased regarding private and state surveillance ¹¹. The Federation proposes a set of crucial amendments, including:

- The need to adopt an **inclusive definition** of the *media and media service providers* that is in line with international standards.
- The need for binding, common, and clear rules on the **transparency** of media ownership in order to ensure meaningful transparency, necessary for trust in journalism.
- Strengthening **safeguards on the independence of National Regulatory Authorities**.

b. The protection of whistleblowers

The general legal framework for the protection of sources has been supplemented by a **specific protection regime for a particular source, the whistleblower**.

Whistleblowers benefit from their own range of protection, that goes well beyond media coverage.

The attribution of this protective status is conditioned by strict procedures and deadlines. As a journalist, therefore, special care must be taken so that public disclosure of information provided by a whistleblower does not cause them to lose their status and protection.

There is no universal legal definition of a whistleblower. Definitions outlined at European and national levels are nuanced. It is worth noting that a **set of prerequisites must be met** to qualify as a whistleblower and benefit from protection

European Council and European Court of Human Rights (ECHR)

The Council of Europe, as the guarantor of democracy, recognises and promotes **freedom of expression**. The protection of whistleblowers is an important element of the Council of Europe’s actions to protect human rights and the rule of law. **The Council recognises that those who report harm to the general interest contribute to strengthening transparency and democratic accountability.**

As early as 2014, the Committee of Ministers adopted **Recommendation ¹² CM/Rec(2014)7 ¹³**, which sets out a series of principles to guide Member States, in order to establish a robust legislative and regulatory framework to facilitate reports and protect whistleblowers. ¹⁴.

The European Court of Human Rights case law is increasingly favourable to the protection of whistleblowers. The Court tended to reinforce and improve the protection criteria granted to whistleblowers, including their right to freedom of expression to allow information collected in the workplace to be disclosed for the general interest.

¹¹ European Federation of Journalists, EFJ publishes position on the European Media Freedom Act, 16 January 2023.

¹² A recommendation is a legal act adopted by the Council of Europe’s decision-making body (the Committee of Ministers) and addressed to its Member States. It constitutes a common policy agreement throughout Europe to promote legislation and practises that meets the high standards of democratic accountability and human rights. Although a recommendation is not legally binding for the governments of the member states, it has a great persuasive value.

¹³ Recommendation CM/Rec(2014)7 of the Committee of Ministers to the Member States on the protection of whistleblowers (adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers’ Deputies): <https://rm.coe.int/16807096c7>

¹⁴ See the Opinion on the Transposition of Directive (EU) 2024/1069 of 11 April 2024: www.legifrance.gouv.fr/jorf/id/JORFTEXT000051250444

- In the case of **Guja v. Moldova of 2008** ¹⁵ relating to an employee from the **public sector**, the Court recognised in particular that the Republic of Moldova had violated *Article 10 of the Convention guaranteeing the right to freedom of expression*.

In this landmark ruling, the Court set out a list of six criteria to be used to assess the situation of the whistleblower(s) making a public disclosure in order to determine whether protection should be carried out on the basis of Article 10 of the ECHR:

- Whether other channels existed to make the disclosure;
 - The public interest in the disclosed information;
 - The authenticity of the disclosed information;
 - The detriment caused by the disclosure of the information in question;
 - The applicant's good faith;
 - The severity of the sanction incurred by the whistleblower.
- The ECHR subsequently confirmed the application of these criteria to employees in the **private sector** in the **case of Heinisch v. Germany in 2011** ¹⁶.
 - Two recent cases in the same so-called "*LuxLeaks*" case show that the ECHR's case law is rapidly evolving in favour of protecting whistleblowers in the interest of protecting public participation. In the **Halet v. Luxembourg of 14 February 2023** ¹⁷, case of the Grand Chamber, the ECHR, in a reversal of protective case law, specifies that the notion of public debate "*could be of an ongoing nature.*" Thus, "*Accordingly, the sole fact that a public debate on tax practices in Luxembourg had already been underway when the applicant disclosed the impugned information could not in itself rule out the possibility that this information might also have been of public interest.*" **Several alerts on the same subject are sometimes necessary for**

the denounced facts to be taken into account.

Therefore, the Grand Chamber found a violation of Article 10, reflecting the importance of public debate on the tax practises of multinational companies.

European Union

In 2019, the European Union adopted a legal instrument aimed at harmonising Member States' law on the protection of whistleblowers: **Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report violations of Union law**, which entered into force on 16 December 2019.

The adoption of this directive is, amongst other things, a **response to the 2016 directive on the protection of trade secrets** ¹⁸, which aimed to better protect businesses' trade secrets. The latter has thus created a worrying breach for freedom of information, notably by allowing SLAPP suits. It has provided a legal framework that can legitimise proceedings against the disclosure of internal information, even when it reveals breaches of public interest. To address this issue, the European Union has therefore adopted the 2019 Directive, which aims to unify the rules on the protection of whistleblowers within the European Union, by correcting the fragmentation of Member States' laws. **It thus applies to all the Member States of the European Union.** They were then obliged to transpose this directive into their national law, with minimum standards of protection, although they could go further.

¹⁵ ECHR, 12 February 2008, Guja v. Moldova, 14277/04.

¹⁶ ECHR, 21 July 2011, Heinisch v. Germany, 28274/08.

¹⁷ ECHR (Grand Chamber), 14 February 2023, Halet v. Luxembourg (LuxLeaks case)..

¹⁸ 2016/943 DIRECTIVE (EU) 2016/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on the protection of undisclosed know-how and commercial information (trade secrets) against their unlawful acquisition, use and disclosure. In France this directive was transposed by Law No. 2018-670 of 30 July 2018 on the protection of business secrecy. relative à la protection du secret des affaires. To understand the link between business secrecy and whistleblowing in France, refer to Annex 3 of this guide.

2019 DIRECTIVE

Directive 2019/1937 makes several significant advances aimed at strengthening the protection of persons reporting violations of EU law.

PROVISIONS

HARMONISING PROTECTION

Minimum standards of protection for whistleblowers in all EU Member States.

REPORTING CHANNELS REQUIRED

Private or public organisations with more than 50 employees and communities with more than 10 000 residents must have internal mechanisms in place to receive alerts from their employees (if, after 3 months, no response is received, it is possible to refer to an independent national body).

PROTECTION AGAINST REPRISAL

Prohibition of any form of retaliation against whistleblowers (most common: dismissal, demotion, suspension, harassment or any other discriminatory measure).

CONFIDENTIALITY AND ANONYMITY

Protection of the identity of whistleblowers, which cannot be disclosed without their consent (except in specific cases as in the context of a criminal investigation).

RECOURSE AND SUPPORT

Appropriate support measures (legal advice, financial assistance, psychological support) and effective recourse mechanisms are in place.

PUBLIC REPORTING

Whistleblowers may publicly disclose information if they believe that there is an imminent or manifest danger to the public interest, or if internal and external channels have not acted on their alert.

REVERSAL OF THE BURDEN OF PROOF

In the event of a dispute, the employer will have to prove that any action taken against the whistleblower was not linked to the report.

EXTENDED PROTECTION FOR REPORTS OF VIOLATIONS OF EU LAW IN KEY AREAS OF ACTION

Several sectors are concerned and listed in Article 2 of the Directive.

EXTENDED PROTECTION FOR THOSE WHO HAVE OBTAINED INFORMATION ON VIOLATIONS IN A WORK-RELATED CONTEXT

Individuals working in the private and public sectors are included.

LIMITATIONS

INEQUALITIES IN NATIONAL IMPLEMENTATION AND DISPARITY IN THE LEVEL OF PROTECTION

The Directive sets a minimum threshold of protection, but its implementation and interpretation may vary from one Member State to another.

COMPLEXITY OF REPORTING PROCEDURES

The Directive's requirements for establishing internal and external reporting channels can be complex to implement, particularly for small and medium-sized enterprises (SMEs) and small government entities.

CROSS-BORDER CO-ORDINATION

violations involving several Member States or entities operating in different countries may pose problems in terms of the co-ordination of investigations and protection of whistleblowers.

¹⁹ "Strategic pursuit against public participation" (also known as "SLAPP suits" or "intimidation lawsuits").

²⁰ United Nations, General Assembly, Report A/79/362 (2024), Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite - « Justice is not for sale: the improper influence of economic actors on the judiciary », published on 23 October 2024.

²¹ Ibid.

²² Ibid.

c. Protection against SLAPPs



WHAT IS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP)? ¹⁹

It is a lawsuit intended to censor a whistleblower, a journalist or NGO, or any other person or entity legitimately using their freedom of expression. Strategic lawsuits generally have little chance in succeeding and convicting the accused: **they are more aimed at exhausting the accused financially and morally, or to frighten them into self-censorship.** This also includes threats of prosecution with the same effect. These practises pose a threat to the freedom of expression and democracy, requiring a firm and coordinated response from Member States.

If we are to effectively tackle SLAPP suits, we need to be able to identify them quickly. The Office of the United Nations High Commissioner for Human Rights, and the Special Rapporteur on the independence of judges and lawyers, have adopted the following definition, characterised by three main criteria:

1. EXPLOITING POWER IMBALANCES:

“An imbalance in financial, political or societal power between the powerful claimant or initiator and the less powerful defendant or target of the SLAPP” ²⁰;

2. MISUSE OF LEGAL TACTICS: *“including bringing disproportionate or excessive claims, issuing multiple legal cases and “forum shopping” ²¹;*

3. ACTIONS AGAINST PUBLIC PARTICIPATION ON MATTERS OF PUBLIC INTEREST:

“Many SLAPPs brought by economic actors allege some form of damage against a company or private interest”; in order to conceal the true purpose of the trial, namely, “to stifle legitimate criticism, oversight or resistance to their activities” ²².

Directive (EU) 2024/1069 of the European Parliament and of the Council adopted on 11 April 2024 ²³ aims to protect people participating in the public debate against abusive and manifestly unfounded lawsuits, also known as SLAPPs (*Strategic Lawsuits Against Public Participation*).

The unsolved murder of a journalist who initiated the anti-SLAPP directive

The need to introduce legislation prohibiting SLAPPs in the European Union attracted public attention after the assassination of the Maltese journalist **Daphne Caruana Galizia**.

The investigative journalist and Maltese blogger, known for her investigations into corruption, money laundering, organised crime, the Maltese government's offshore financial transactions, and the Panama Papers scandal, was assassinated on October 16, 2017, when a bomb exploded under her car near her home in Malta. At the time, she was the subject of 40 lawsuits brought against her by the main defendants in these investigations.

Her blog, *Running Commentary*, was one of the most popular sites in Malta. Her work has had a considerable impact and has drawn international attention to the corruption issues in Malta. Her assassination prompted protests and calls for justice, highlighting the need to protect investigative journalists and to guarantee the freedom of the press.

This Directive lays down minimum rules to ensure adequate protection in the face of proceedings. Member States thus have the possibility of adopting stricter measures ²⁴.

²³ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (“Strategic lawsuits against public participation”), 546 votes in favour and 47 votes against. <https://eur-lex.europa.eu/eli/dir/2024/1069/oj?eliuri=eli%3A2024%3A1069%3Aoj&locale=en>

²⁴ Article 3, minimum requirements: “Member States may introduce or maintain provisions that are more favourable [...]”

2024 DIRECTIVE

PROVISIONS

EARLY DISMISSAL MECHANISM

Courts must make quick decisions regarding the rejection of clearly unfounded cases and the requirement for financial guarantee ²⁵.

COST OF PROCEEDINGS

In the event of an abusive procedure, the Court may require the claimant to bear all the costs of the proceedings incurred by the defendant.

PENALTIES AGAINST INITIATORS OF THE PROCEEDINGS

The judge may impose sanctions or other dissuasive measures on the party who initiated the proceedings.

VICTIM SUPPORT

Measures are in place to provide legal and financial support to victims of SLAPPs.

SUPPORT MEASURES

Member States must establish rules allowing associations, organisations and trade unions to support defendants and provide information during proceedings.

ACCESS TO INFORMATION

Member States will need to centralise information on procedural safeguards and remedies available to these victims ²⁶.

CROSS-BORDER APPLICATION

The Directive is intended to apply to cross-border civil cases, providing protection beyond the borders of the European Union. It also outlines grounds to refuse the recognition of SLAPP suits issued in third countries.

LIMITATIONS

This directive marks an important step forward, but remains perceived as insufficient to fully meet the expectations of journalists and whistleblowers who are victims of reprisal:

WITHOUT AMBITIOUS TRANSPOSITION, THE APPLICATION OF THE TEXT COULD ONLY BE LIMITED TO INTERNATIONAL CIVIL OR COMMERCIAL PROCEDURES.

In French law, this would exclude SLAPPs based on criminal law, such as defamation, and purely national procedures.

LACK OF STRONG INCENTIVES TO DETER SLAPPS

Although the directive provides for sanctions and the possibility of requiring bail from the applicant, these measures may not be sufficient to discourage abusive prosecutions if their application is too restrictive. ²⁷

LIMITED SCOPE OF EARLY DISMISSAL

The early dismissal measure, which is one of the directive's main advances, applies only to “manifestly unfounded claims.” However, the absence of a precise definition of this concept leaves a margin of interpretation that could reduce the effectiveness of the device ²⁸.



IT SHOULD BE NOTED THAT AT THE TIME OF WRITING THIS GUIDE, THE DIRECTIVE HAS NOT YET BEEN TRANSPOSED INTO NATIONAL LAW.

²⁵ Article 11 of the 2024 Directive: “Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.”

²⁶ Council of the European Union press release, Anti-SLAPP, Final green light for EU law protecting journalists and human rights defenders, 19 march 2024.

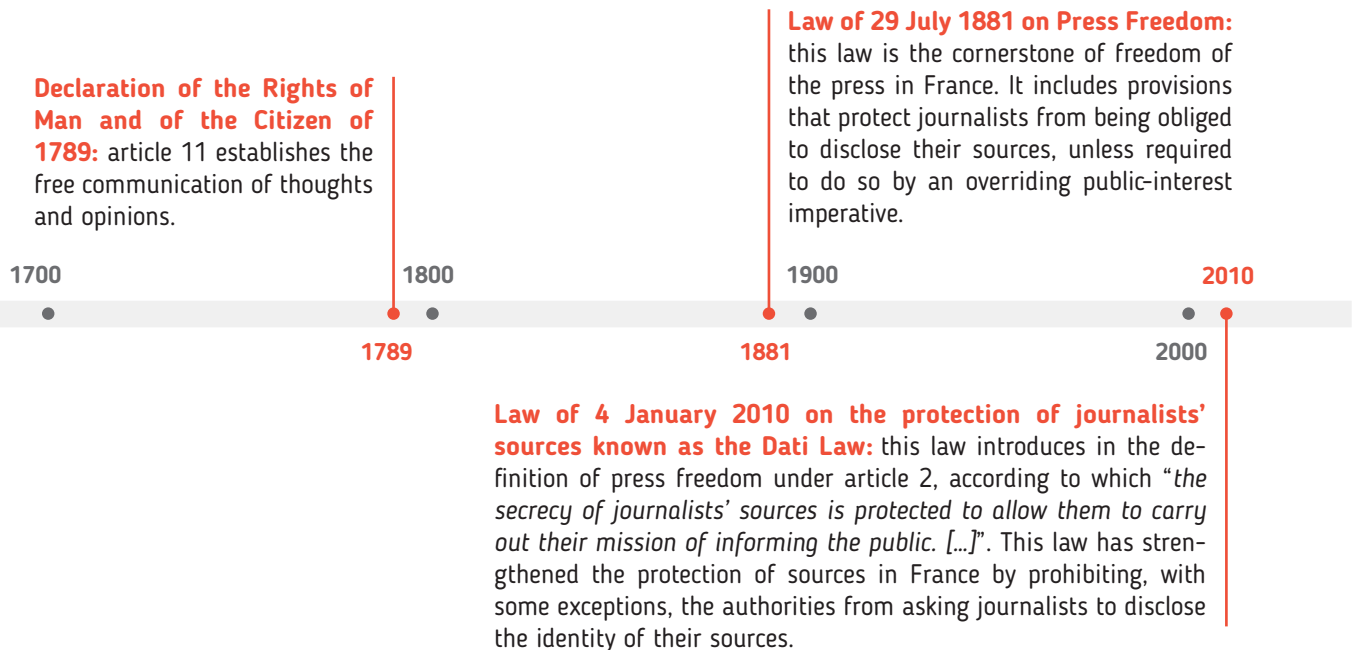
²⁷ Pauline Delmas, Directive against SLAPP procedures: Facing the limits of the European framework, Advocacy for ambitious transposition, Lefebvre Dalloz, published in French on 27 May 2024

²⁸ *ibid.*

2. En France

a. The protection of journalistic sources

Several laws contribute to the regime that applies to the protection of journalistic sources in France. This principle aims to ensure that journalists can collect and publish information of public interest without being forced to reveal the identity of their sources, which is essential, especially for investigative journalism.



However, **French law does not guarantee the absolute protection of sources.** According to Article 2 §2 of the 1881 Act, amended in 2010, the confidentiality of sources may be breached if an **overriding requirement in the public interest** so justifies, and if the measures envisaged are strictly necessary and proportionate to the legitimate purpose pursued, with regard to certain protections only.

For Reporters without borders (RSF), the concept of an “*overriding requirement in the public-interest*” is “*extremely vague and allows investigators to abuse their investigative powers,*” especially given that it is not characterised accurately. RSF therefore requests the deletion of this provision, wishing to replace it with a more restrictive and defined rule²⁹.

Under French law, only journalists benefit from this protection. Article 2 of the 1881 Law as amended by the Law of 4 January 2010 states that “*shall be regarded as a journalist [...] any person who, exercising their profession in one or more media companies, online communication to the public, audiovisual communication or one or more press agencies, practises, on a regular and remunerated basis, collects information and disseminates it to the public*”.

²⁹ Nicolas Bamba, *In France, the freedom of the press is undermined by the lack of transparency of a controversial Law*, RFI, May 3, 2024

Thus, certain protections provided for in the French code of criminal procedure (hereinafter CCP) can be waived if required. This includes:

- **Article 100-5 of the French code of criminal procedure:** it prohibits the transcription of correspondence with a journalist allowing the identification of a source, except in the case of an *overriding requirement in the public interest* (IPIP).
- **Article 56-2 CPC §5 et seq.:** When issuing a search warrant for a journalist, a judge must ensure that the infringement of the protection of sources is justified by an IPIP, and that it is proportionate. Any person located at the site of the search may challenge the seizure of any document or object if they deem it unjustified: the document is then sealed and it is up to the magistrate for custody and release to determine within 5 days whether there is an IPIP justifying the breach of the source confidentiality, and whether the breach is proportionate.

On the other hand, **the protections provided for in paragraphs 1 to 4 of Article 56-2 CDPF can never be circumvented**, even in the presence of an overriding requirement in the public interest.

Other articles of the code of criminal procedure provide for the removal of the secrecy of sources by the judge, including:

- **Article 60-1** provides that the public prosecutor may not obtain journalist's documents that relate to the investigation without the journalist's prior approval.

- **Articles 326 and 437** allows journalists to refuse to testify on the origin of information collected through the course of their work.

Finally, the **Bloche Law of 2017** adds an ethical aspect by imposing charters of ethics on media outlets and giving journalists the right to refuse to disclose their sources or to carry out acts against their interest.

It should be noted that at the time of writing this guide, the government has not yet unveiled the legislation it intends to propose, although these texts are likely to be amended

b. The protection of whistleblowers

The legal framework applicable to whistleblowers in France is set out in **Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life** known as the "*Sapin II law*", amended by **Law No. 2022-401 of 21 March 2022 to improve the protection of whistleblowers**, known as the "*Wasserman Law*".

This 2022 law is the transposition of Directive (EU) 2019/1937. It amended the Sapin II law to align the French legal framework with the new European requirements.

21 MARCH 2022 LAW

PROVISIONS

BROADENING THE DEFINITION OF A WHISTLEBLOWER

The law extends protection to more people such as volunteers, trainees, former employees, etc.

REPORTING CHANNELS

Establishing and clarifying internal and external reporting procedures, including the possibility of directly contacting an external authority from a list established by decree.

CONFIDENTIALITY AND ANONYMITY

The law guarantees the confidentiality of the whistleblower's identity and may allow anonymous reporting.

STRENGTHENED SUPPORT MEASURES

Additional support measures for whistleblowers (psychological and legal assistance).

ENHANCED PROTECTION AGAINST REPRISAL

Extension of the types of reprisals covered beyond dismissal: demotion, harassment, ostracism, promotion refusal, disciplinary measures, etc ³⁰

REHABILITATION MEASURES

The whistleblowers who are victims of reprisals may request compensation, including reinstatement in their employment and/or compensation for damages suffered.

CIVIL AND CRIMINAL LIABILITY OF WHISTLEBLOWERS

Their civil liability is ruled out if they have made a report in good faith. As a result, whistleblowers cannot be held liable for damage caused by their report (e.g., loss of revenue to a company in the event of public disclosure). The same applies to their criminal liability if they remove, misappropriate or conceal documents or other media containing information that they were made lawfully aware of.

LIMITATIONS

APPLICATION DISPARITIES

The effective implementation of protection depends on the ability of businesses and governments to put in place effective reporting mechanisms.

LIMITATIONS OF ANONYMITY

while the law allows anonymous reporting, this option remains unused, and the protection offered to anonymous whistleblowers is less robust than those granted to confidential whistleblowers.

LIMITED ACCESS TO ASSISTANCE

Psychological and legal support is subject to available resources.



FOR A COMPLETE OVERVIEW OF THE AMENDMENTS MADE BY THE WASERMAN ACT OF 2022, SEE OUR GUIDE FOR WHISTLEBLOWERS AND AVAILABLE SUPPORT ³¹, AS WELL AS THE TOOL IDENTIFYING ALL THE LEGISLATIVE DEVELOPMENTS INTRODUCED BY THE LAW ON THE MLA WEBSITE ³².

FOR A LIST OF LAWS AND DECREES RELATING TO WHISTLEBLOWING, PLEASE REFER TO THE "TOOLS" SECTION ON OUR WEBSITE: <https://mlalerte.org/ressources-juridiques>

³⁰ For example, "blacklisting" or "bullying" is contained in section 10-1 of the amended Sapin II law.

³¹ Maison des Lanceurs d'Alerte, Whistleblower guide: <https://mlalerte.org/outils/>

³² Rights of whistleblowers: <https://mlalerte.github.io/>

3. In Belgium

a. The protection of journalistic sources

In Belgium, several legislative texts guarantee the freedom of the press and, by extension, the protection of journalistic sources.

- **Belgian Constitution: Article 25** guarantees a free press. Although it does not explicitly address the protection of sources, it is the basis of journalistic freedom in Belgium.
- **Law of 7 April 2005 on the protection of journalistic sources:** this law is the central text for the protection of journalistic sources in Belgium.

Belgian law guarantees that journalists cannot be forced to disclose their sources, except under very special circumstances, on the request of a judge, and in the event of risks linked to specific offences. According to **Article 2**, which resumes the **judgment of the Constitutional Court of Belgium of 7 June 2006**, this protection is awarded to “any person who contributes directly to the collection, writing, production or dissemination of information, through the media, for the benefit of the public”, including employees who have access, in the exercise of their duties, to information which can identify a source.

b. The protection of whistleblowers

With regards to the protection of whistleblowers, Belgian legislation remains relatively incomplete. **Belgium has no overall legal framework, only federal and Flemish provisions for the public sector.** However, Belgium has incorporated the advances of the 2019 European Directive through two separate laws, one for the public sector and the other for the private sector:

- **Law of 28 November 2022** on the protection of persons reporting violations of Union law or national law found within a legal entity in the private sector ³³.

The material scope of this law is broader than that of the Directive. It covers a wide range of areas, including public procurement, product safety and compliance, environmental protection, public health, and network and information systems security, amongst others. It provides specific protection to whistleblowers who report violations in areas related to the fight against tax and social fraud.

For the personal scope, protection applies to private sector whistleblowers, including employees, self-employed journalists, trainees, shareholders, officers, subcontractors, suppliers, as well as facilitators such as union secretaries.

Article 33 §2 provides for penalties against any person or entity impeding the reporting, retaliating, or failing to respect the confidentiality of the identity of the whistleblower, with imprisonment of 6 months to 3 years and a fine ranging between EUR 600 to EUR 6 000.

- **Law of 8 December 2022** on reporting channels and the protection of reporting persons in Federal Public Sector organisations and the Integrated Police. The purpose of this law is to provide a high level of protection for individuals reporting breaches of integrity in federal public sector organisations and integrated police force.

³³ Law of 28 November 2022 published on 15 December 2022 in the Belgian Official Gazette and entered into force on 15 February 2023.

4. In Switzerland

a. The protection of journalistic sources

In Switzerland, the protection of journalistic sources is also a key element of press freedom, recognised and regulated by legislation.

- **Article 17** of the **Swiss Federal Constitution** guarantees freedom of the media and the press.
- **Article 28(a) of the Swiss Penal Code:** this article protects journalists against forced disclosure of their sources unless justified by a major public interest.
- **Article 172.1 of the Swiss code of criminal procedure:** journalists may refuse to provide information on the identity of the reporting persons or on their content and sources without incurring criminal liability.

In a **judgement handed down on 6 October 2020** ³⁴, the European Court of Human Rights condemned Switzerland for violating Article 10 of the European Convention on Human Rights. The Court found that the official requirement for a journalist to disclose the identity of their source violated the freedom of the press, which is protected by Article 10. Journalists' rights to refuse to testify should therefore be improved.

b. The protection of whistleblowers

Switzerland is not part of the European Union, so it is not subject to the 2019 Directive protecting whistleblowers. In addition, it does not have specific protection legislation.

Switzerland is frequently criticised for its insufficient measures against corruption (as pointed out by the Organisation for Economic Co-operation and Development (OECD) and *Transparency*

International ³⁵) and for its lack of adequate protection for whistleblowers, particularly in the private sector.

- **Poor protection:** as a member of the Council of Europe, Switzerland has a duty to protect public sector employees who take the risk of denouncing the unlawful activities of their employers. Unfortunately, denouncing harassment or workplace violence in Switzerland remains complex, often leading to unfair dismissal and sometimes legal repercussions. The whistleblower status is still very precarious and rarely recognised by the legal system.

For example, in 2020, a bill to include protection for anyone who reports malpractice in the workplace ³⁶ was rejected by the Federal Assembly.

- **Recent developments:** Despite the lack of a national law to protect whistleblowers, some cantons, such as Geneva ³⁷, have laws in place guaranteeing the anonymity of whistleblowers and providing protection against professional consequences for whistleblowers from the cantonal administration, the parliament, the judiciary, high schools, public law institutions and municipal authorities. In addition, a group of external authorities has been designated by law to receive and process reports. Other cantons are beginning to follow this example and mimic this approach.

To improve the overall situation in Switzerland, common regulation must be established for the public and private sectors, as well as independent bodies to process alerts and verify information in a confidential manner. In the future, Switzerland could develop and add an effective alert system to its legislation that would allow risks to be identified in a timely manner and avoid sanctions and infringements on the freedom of expression.

³⁴ ECHR, 6 Nov. 2020, *Jecker c. Suisse*, req. NO. 35449/14.

³⁵ 24 heures [Switzerland], Whistleblowers will not be better protected in Switzerland, publié le 27 février 2025.

³⁶ A proposal for a law of the Federal Council involving the "Protection in the event of reports of malpractice in the workplace", was rejected twice - and thus definitively - by the National Council on 4 March and then on 10 June 2020.

³⁷ Law on the Protection of whistleblowers in the Canton of Geneva (LPLA) (12261) of January 29, 2021, entered into force March 26, 2022: <https://ge.ch/grandconseil/data/odj/020308/L12261.pdf>



The relationship between a journalist and their sources is an essential element of this guide.

A whistleblower's challenge is first and foremost to break up and/or restore the truth and stop the reported wrongdoing. With this in mind, whistleblowers may need to turn to a journalist. The integrity, reliability and effectiveness of the media largely depends on the quality of this relationship.

02.



The relationship between a journalist and whistleblower

①

As a journalist,
what should I do when a
whistleblower contacts me?
(28)

②

As a whistleblower,
how should I choose which
journalists to contact?
(30)

③

As a whistleblower,
how do I contact a journalist
for the first time?
(32)

1. As a **journalist**, what should I do when a whistleblower contacts me?

Journalists have a responsibility to ensure that the information they present is accurate, fair and balanced. When a potential whistleblower makes contact, you should firstly verify the integrity of their information. Start by asking the right questions to ensure that all possible reporting means have been explored before turning to the media.

Whistleblowers often find themselves in a vulnerable situation, feeling isolated and under pressure. They see journalists as an ally, capable of making their voice heard and the truth made public. As a result, their expectations can be particularly high.

It is crucial that, from your first exchanges, you clarify the principles of investigative work, to identify the expectations of the whistleblower, and to set realistic limits. This transparency is essential to avoid false promises and build trust. Whistleblowers, despite often being an expert in their subject area, are not familiar with the workings of the press or media. Taking the time to explain the different steps will help you to save time later and avoid excessive expectations. This means that journalists can act responsibly while remaining aware of the capabilities and constraints of their profession.

I make sure that initial contact is secure

The use of secure communication channels must be a priority, and remain so throughout the investigation, in order to ensure not only the confidentiality of shared information, but to maintain a framework of trust. To facilitate exchanges, time may be required to train and support sources or whistleblowers on how to use secure tools.

- Use secure communication channels, such as Signal or Telegram instant messaging or the Proton mail messaging service.
- Ask your source not to contact you via their professional communication channels or during working hours.
- To transfer sensitive documents, use tools such as SecureDrop, Globaleaks or SwissTransfer. In time, you can ask your source to transfer documents via USB or by post.
- For face-to-face meetings, choose an outside space where the source is not likely to be recognised. Also ensure that no personal mobile phone is at hand, to guarantee the confidentiality of your exchanges.
- Before sharing any document (for example, in an article), be sure to remove metadata from the documents (invisible information such as name of the author, date of creation, geographical location, etc.).
- Don't leave your computer or phone unattended.



I verify information without exposing the source

Journalists must cross-reference information with other reliable sources - official documents, additional testimony or other elements - and verify the accuracy of facts without exposing the person who made the report. This not only ensures the soundness of the investigation but also prevents any risk of reprisal for the whistleblower.

I explain my role as a journalist.

“We are not rescuers, we are not going to help them legally, perhaps the article will never help them”

Testimony from a journalist interviewed by the MLA

Whistleblowers are not experts in communication, so it is important to educate them about what journalistic investigative work is:

- Certainty and even evidence of wrongdoing are not always sufficient to trigger an investigation and subsequent publication in the media.
- The final article is not necessarily what the whistleblower will expect.
- Investigative work requires contacting the accused party to respect their right to be heard.
- Public disclosure of facts that violate the law is often not sufficient to obtain justice or compensation.

FOR MORE INFORMATION:

ELECTRONIC FRONTIER FOUNDATION

This online guide links to a wide range of resources, including explanations of the fundamentals of secure communication, how-to guides, in-depth information and security scenarios.

WORKING WITH WHISTLEBLOWERS, A GUIDE FOR JOURNALISTS (Government Accountability Project) :

This comprehensive guide includes a full section on best practises for communicating safely with sources.

DIGITAL PROTECTION GUIDE (NOTHING 2 HIDE)

From basic communication encryption tips to precautions to take with event coverage, this digital protection guide will help you protect your information.

2. As a whistleblower, how should I choose which journalists to contact?

Sending out an SOS and overwhelming media outlets with messages is not a good way of getting journalists' attention. Here are some tips to get it right.

I define a media strategy

When deciding to contact the press, it is important to establish an appropriate media strategy. This is based on informed choices and key messages to maximise the impact of your alert and protect your status as a whistleblower. Here are some key strategy elements:

- **Set realistic goals for your media strategy.**

Simply going public does not solve everything. It can however play an essential role in raising public awareness, putting pressure on political leaders or gaining the attention of those who can take action.

- **Define key messages.**

Messages should be clear, accurate, and have a strong impact. By making them simple and straightforward, they will easily stand out and be more likely to be taken on by several media outlets, without losing their essence.

- **Set a target audience.**

It is essential to think about the right media outlets (national, regional or specialised) and target audience (residents of a particular city or neighbourhood, politicians or specialists) according to your objectives and key messages.

- **Set a broadcast schedule.**

It is important to publish your report at a time when the information will have maximum visibility. This includes taking into account upcoming media or political events, in order to prevent your story from being lost in the news.

I choose a media outlet/journalist

- **Find out more about journalists who specialise in topics similar to your story:**

Before choosing your outlet, we recommend finding out more about the work of journalists you want to contact. Focus on those who have already investigated similar issues, whether environmental issues, police violence, corruption, etc. It's also an idea to choose a journalist who covers their local geographical area and works with the media or media outlets that are known for their professionalism, especially in terms of verifying information and respecting the rights of the defence.

● **Speak to the most relevant media outlets, without neglecting the local and independent media:**

It may seem more strategic to contact major national media outlets directly to maximise your story's reach. And yes, everyone wants to work with Elise Lucet! But regional media outlets should not be ruled out. They have a valuable local network and a very good understanding of specific issues on the ground. Their geographical proximity also allows them to spend more time on the investigation, without needing to travel.

In addition to major national and regional media outlets, the independent media is another option to consider. Their editorial line often allows them to address topics that are not addressed by other media and to experiment with various formats, such as online surveys, podcasts, or documentaries. Depending on the nature of the report, these media outlets may provide additional visibility to your story.

If they are not interested, perhaps they were not the most suitable journalist or media outlet. However, there are also many cases where reports are not publicised because they are not considered *"serious enough"* or *"important"*, or do not require further investigation. This may be a matter of contextual analysis (this is currently not a sufficiently significant social subject, which may change) or of scale (the facts are on a local or interpersonal scale).

● **Contact an investigative journalist first and then share your story with other media outlets.**

It is recommended that you first contact an investigative journalist who will take the time to verify the facts, further the investigation and thoroughly structure the file.

It may be tempting to contact several journalists simultaneously, especially when the situation appears to be at a standstill and the reported issues persist. But getting in touch with multiple contacts too soon can be counterproductive.

We recommend first building a trusting relationship with one or a few journalists, to ensure your story is correctly processed and not mishandled or published too early.

It is also worth noting that some media outlets impose exclusivity clauses on the journalists they work with, which prohibits the same information from being published elsewhere, at least for a certain period of time. By contacting several journalists at the same time, you could be complicating the publication process and damaging your relationship with the press.

Once the story is published, we would then recommend contacting other media outlets. National, regional, local, independent, etc. Each media outlet has its own target audience and speciality, and this means you reach a larger audience and amplify the impact of your report.

3. As a whistleblower, how do I contact a journalist for the first time?

The first contact is often made via email. In order to catch their attention and be taken seriously, be sure to make your email clear, concise, and well-structured. Get straight to the point by answering the following key questions: “who”, “what”, “how», “where» and “when”. There is no need to overwhelm your contact with details or to send them constant reminders, journalists receive plenty of requests and have little time to decide whether they want to investigate a story further.

If the journalist is interested, bear in mind that at first, exchanges are informal. Nothing will be published without your explicit consent, meaning you stay in control of what information is shared. It is therefore essential to clearly indicate your intentions from the outset.

Remember that this initial contact is not binding to you, or the journalist. You may choose to end the working relationship if you do not feel confident, just as the reporter may decide not to follow up on your request.

Don't forget to mention:

#01

Compliance with legal deadlines:

As a general rule, we recommended that you wait until the statutory deadlines ³⁸ have passed before contacting the press. However, it is possible to do so before, provided that the journalist is informed that these deadlines must be respected for you to be recognised as a whistleblower. We encourage you to ask that nothing be published before the end of this period.

#02

Protection of anonymity:

If you want, you have the right to ask to remain anonymous. This may include the use of a fictitious name as well as the modification of certain elements such as your exact job title, age, gender or other physical and/or personal characteristics. Some specific details of your case may also be kept private if their disclosure doesn't add anything to the substance of the alert. For example, rather than mentioning an exact date, such as February 20, 2010, the journalist may use more general wording, such as “*at the beginning of the year*” or “*six months later*”, especially for items such as the start date of your employment contract or sick leave.

#03

What can be disclosed and most importantly, what must remain confidential:

From the outset, together think about what you can share about your case to reduce the risk of defamation or charges against violation of privacy. The aim is not to restrict the freedom of the press, but to protect both you and the journalist.

³⁸ In France, whistleblower can go public with their story six months and one week after having referred an external authority. In Belgium, the time limits are similar, in accordance with the European Directive, with a response time of three to six months depending on the complexity of the case. In all cases, we would recommend waiting six months and a week to be sure. In Switzerland, there is no general regime: laws vary according to the cantons, and it is recommended to consult a specialised association or a lawyer before any disclosure takes place. For more information, refer to pages 42 to 47 of this guide (Journalists and whistleblowers, I must respect public disclosure deadlines)

Why remain anonymous?

Because the law permits and guarantees it

A violation of this principle results in legal penalties.

- Protection of sources
- Protection of whistleblowers

To protect your mental health and limit pressure

When you are reporting misconduct, it is likely that the other party will recognise you. However, not seeing your name and face displayed in public reduces the psychological impact.

To protect against SLAPP suits.

The greater the power gap, the greater the risk of facing a SLAPP suit. Anonymity can offer additional protection.

To be able to turn the page in your professional and personal life.

Many whistleblowers have difficulty finding work, especially in their industry, once their identity is known.

Ultimately, it's your choice!

Each situation is unique, and it is essential to weigh up the pros and cons before making a decision. Anonymity can be difficult to maintain if you are in a leadership position or a position where few people have access to the reported information. Moreover, the media strategy plays a key role: some rely on anonymity to minimise risk, while others require revealing the identity of the whistleblower to reinforce the impact of the message.





Initiating an alert and reporting facts is usually a risk for whistle-blowers and can take the form of reprisals of different kinds.

03.



Protect others (and protect yourself)

①

1. As a journalist,
I should be aware of
the risks to my source
(36)

②

As a journalist,
I am aware of the risks
I am taking
(38)

③

As a journalist, I redi-
rect the whistleblower
to the competent au-
thorities and organisa-
tions
(42)

④

Journalists and
whistleblowers,
I must respect public
disclosure deadlines
(42)

1. As a **journalist**, I should be aware of the risks to my source

The journalist has a key role to play in protecting the person who transmits and shares information with them, but also in protecting themselves. It is the responsibility and credibility of the journalist and the media outlet that is representing them to protect themselves as much as possible. Ensuring the confidentiality and safety of exchanges also means protecting yourself and maintaining the ability to do your work adequately.

I assess the risks for each investigation

Defining the “responsibilities” and potential risks of the investigation is crucial. Depending on whether the denounced facts require the participation of a company, state, foreign power, or a mafia organisation, the risks may differ (threats, searches, seizure of professional computer equipment, etc.).

Your chosen communication channels may also vary depending on the risks. For example: in Switzerland, publicising financial crimes will put you at risk of significant threats and judicial proceedings. In France, if the sources are linked to the extreme right, the risks of physical harm or death threats are higher. Implementing a protocol that is adapted to every situation will make it possible to anticipate the potential consequences.

While the primary objectives are to avoid or mitigate the risks involved, in some cases the risks cannot be avoided. For example, accessing a company's intranet leaves a digital trail that is easy to trace.

I am aware of the risks that the whistleblower may be exposed to when sharing information

● Professional risks

The occupational risks incurred by whistleblowers are usually related to their working situation and can take various forms: isolation at work, non-renewal of a contract, unjustified change in their working conditions. The most severe cases may include dismissal or contract termination for contractors.

In French law, the Sapin 2 law amended several articles of the Labour Code, to increase the protection of whistleblowers against reprisals affecting them professionally. Specifically, where the dismissal is based solely on the alert that would have been issued, the judge may decide if the dismissal was unfair³⁹ and can reinstate the whistleblower⁴⁰.

In Belgium, the law of 15 September 2020 on the protection of public sector whistleblowers offers similar guarantees.

● Violations of fundamental rights

While they may occur outside of a professional setting, violations of fundamental rights are common in the workplace. They can manifest themselves in the form of an **invasion of privacy, discrimination, harassment or intimidation, as well as threats and violence.**

³⁹ For this purpose, for example, Article L. 1121-2 of the French Labour Code provides that no person may be excluded from a recruitment procedure, penalised, fired or discriminated against, in particular as regards remuneration, training, or promotion, for reporting information in accordance with Articles 6 and 8 of Law No. 2016-1691 of 9 December 2016. Article L. 1132-4 states that any measure contrary to these provisions is null and void.

⁴⁰ The L. 911-1-1 clause was added to the French Code of Administrative Procedure by the Sapin II law, which provides that the jurisdiction may order the reinstatement of any person that has been dismissed, whose contract has not been renewed, or revoked in violation of Articles L. 4122-4 of the Defence Code, L. 1132-3-3 of the French Labour Code, or 6 ter A of Law No. 83-634 of July 13, 1983, even if the person held a fixed-term contract.

⁴¹ Virginie BAGOUET and Luu-Ly DO-QUANG, “The Girl from Brest”, the story of Irène Frachon's fight against Mediator, APM News, published on 16 September 2016: www.apmnews.com/freestory/0/291863/la-fille-de-brest%C3%A9-l-histoire-du-combat-d-irene-frachon-contre-mediator

⁴² “Mental Health Problems Among Whistleblowers: A Comparative Study”, Van der Velden, Pecoraro, Houwerzijl & van der Meulen, (2019). Psychological Reports, Vol. 122(2) 632-644

For example: the whistleblower **Céline Boussié**, a former medical & psychological assistant, publicly denounced the mistreatment of disabled children at the Maison des Enfants de Moussaron, a medical-educational Institute (IME) located in Condom (in the Gers department), in 2015 on French media channels LCI and Europe 1. She suffered reprisals including hate messages on social media, and photos of her were hung on the walls of her workplace and used as dartboards.

● Physical violence

For example: **Maureen Kearney**, a trade unionist at Areva, was physically assaulted after speaking out about the company's corrupt practises. At that time, Maureen was investigating secret contracts between France and China, relating to the design of a new nuclear reactor. She believed that these negotiations would affect Areva's future and tried to alert politicians and the media. In autumn 2012, at the peak of the case and after receiving anonymous threats, Maureen was found tied up in her home on December 17, 2012, with the letter A carved into her body.

Other examples: **Irène Frachon** suffered physical pressure and intimidation after publicly revealing the Mediator scandal⁴¹. This is also the case of Houria Aouimeur, who reported the large-scale embezzlement in the wage-guarantee organisation she ran, Unedic-AGS. Billions of euros were lost. Since her report, she has been threatened, harassed, followed home, victim of a nightly home invasion, and photographed by masked men, amongst others. She will be placed under protection.

As can be seen in these examples, women whistleblowers are particularly and violently affected.

They may also be victims of sexism, harassment and sexual violence.

● Socio-economic risks

- **Financial difficulties:** these are related in particular to the legal fees incurred as a result of reprisals.
- **Difficulties in re-integrating the labour market:** many employers may be reluctant to hire whistleblowers, believing they may be too problematic.

- **Social isolation:** as a result of their reporting, whistleblowers may be sidelined by their peers, relatives or family. They can also deliberately move away from their social circle.

- **Impacts on mental health:** the consequence that whistleblowing has on mental health is to be taken extremely seriously. When reprisal results in dismissal, and given the length of proceedings, the result can be frustration, powerlessness, and profound injustice. Psychological support, therefore, is essential in the early stages, to prevent the alert from *"taking over"*.

Did you know?

Comparative studies in the United States show that whistleblowers have a much higher prevalence of mental health difficulties than other groups, such as cancer patients or people with occupational disabilities. About 85% of whistleblowers suffer from severe to very severe anxiety, and show signs of depression, interpersonal sensitivity, agoraphobia and sleep disorders.⁴²

Whistleblowers are not initially aware of the impact their story might have, especially when going up against large economic actors or state services.

2. As a **journalist**, I am aware of the risks I am taking

As a journalist, you also take risks by carrying out my investigation. Raising awareness, sharing, and anticipating possible risks as much as possible will help to protect yourselves against possible reprisals or consequences.

They can also result in prosecution in the form of compensation, and criminal prosecution.

● Invasion of privacy

This risk seems high and excessive but must be mentioned.

- Because, according to the Global Impunity Index published by the Committee for the protection of journalists, **261 journalists were murdered around the world because of their work** over a 10-year period, and in the European Union to date, 4 murders still remain unpunished ⁴³.
- Because it was the **murder of the Maltese investigative journalist Daphne Caruana Galizia that gave its name to the Directive against SLAPP suits**, known as «Daphne's Law». (See page 19)

● Acts of threats and violence

Antoine Champagne is a perfect example. Following the numerous articles he published on the French group Nexa, Antoine was the subject of a private investigation, and a physical surveillance operation carried out by Nexa. He was investigating 2 criminal investigations taking place against Nexa for selling their products to dictatorships ⁴⁴. The journalist received death threats. A Nexa executive said that they should “*put a bomb*” in his home.

● Physical violence

Journalists may be subject to an increasing number of physical attacks as the investigation progresses. This is what happened, for example, to investigative journalist **Morgan Large**. Two years after the first reprisal, the journalist and producer of a documentary about the abuses of the agribusiness sector was once again the victim of sabotage. She has spoken out about the normalisation of these practices ⁴⁵.

Journalist **Inès Léraud** suffered numerous malicious acts in March 2021 (anonymous phone calls, car sabotage, damage to the premises hosting her radio station Kreiz Breizh) after speaking out against the food industry ⁴⁶ following an investigation into the proliferation of green algae. Reporters without borders (RSF) was able to qualify the intimidation of both journalists, Inès Léraud and Morgan Large, as lobbying from the agro-industry.

● Violence against women: sexism, harassment, sexual violence...

In 2014, the first global study on the safety of female journalists, conducted by the International News Safety Institute (IPI) and the International Women's Media Foundation (IWMF), showed that nearly half (48%, or 683 women) of journalists surveyed reported having been sexually harassed ⁴⁷.

⁴³ Euractiv, The murders of 4 journalists in the EU remain unpunished, according to a report published in French on 2 November 2023

⁴⁴ Mediapart, “Predator files”: Nexa’s undercover investigation into journalist Antoine Champagne, published in French on October 10, 2023

⁴⁵ Franceinfo, Following a second threat, the Breton journalist Morgane Large has concerns about her future, published on 1 April 2023

⁴⁶ See www.clemi.fr/ressources/ressources-pedagogiques/investigation-sous-pression-le-cas-breton

⁴⁷ Barton A., Storm H. (2014, Violence and Harassment against Women in the News Media: A Global Picture, International News Safety Institute & International Women's Media Foundation. 11,26% Des femmes journalistes interrogées vivent en Afrique et 18,53% en Europe.

⁴⁸ CNIL, Cyberviolence and Cyberharassment: que faire?, source in French, November 20, 2023: www.cnil.fr/fr/cyberviolences-et-cyberharcèlement-que-faire

⁴⁹ www.ihemi.fr/articles/organisation-france-europe-cybersecurite-cyberdefense-V2 [the INHEJ site no longer exists since merging with IHEMI (Institute of Advanced Studies of the Ministry of the Interior) in 2021]

⁵⁰ For more information on the Budapest Convention on Cybercrime and its Protocols: www.coe.int/en/web/cybercrime/the-budapest-convention



TACKLING CYBERBULLYING

In France, the National Commission on Informatics and Liberty (CNIL) defines cyberbullying as “repeated malicious acts, in a public or restricted setting, which can take different forms: intimidation, insults, threats, rumours, publication of compromising photos or videos, etc. they can be done by a single person or by several individuals and take place on social networks, via instant messaging, forums, blogs, etc.”⁴⁸

The legal framework for combating cyberbullying

● Within the European Union:

Several procedures are in place to deal with cybercrime, particularly in crisis management. All of these methods, along with a mapping of the relevant European and state actors are detailed on the website of the French National Institute of Advanced Security and Justice Studies (INHESJ)⁴⁹.

- The primary legislative text in the fight against cybercrime is the **Budapest Convention of 2001** and its additional protocols⁵⁰. A monitoring committee has been established to ensure implementation of these texts (the Cybercrime Convention Committee (T-CY). In its cyberviolence mapping study, T-CY defines cyberviolence as “The use of computer systems to cause, facilitate or threaten violence against individuals that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering and may include the exploitation of the individual's circumstances or vulnerabilities⁵¹”.

- **The European Media Freedom Act, EMFA, adopted on 13 March 2024**⁵² requires Member States to guarantee the independence of European media and to protect journalists in the European Union from political or economic interference. In particular, the law prohibits authorities from pressuring journalists and editors to disclose

their sources, such as by detaining them, imposing sanctions, searching their offices, or installing intrusive monitoring software on their electronic devices.

● Under French law:

Cyberharassment is punishable under Article 222-33-2 of the Penal Code by 2 years' imprisonment and a fine of EUR 30 000.

● Under Belgian law:

Article 442bis in the Penal Code with a view to criminalising harassment was added by the law of 30 October 1998⁵³. The penalty is a period of 15 days to 2 years imprisonment and a fine of fifty francs to three hundred francs, or only one of these sentences. The same penalty is imposed in the case of cyberharassment pursuant to Article 145 3bis⁵⁴.

● Cyberharassment does not exist under Swiss law:

By contrast, the Swiss Penal Code punishes certain behaviour that often makes up cases of harassment and intimidation. Cyberharassment is understood to be a combination of offences under the Swiss Penal Code. On 21 December 2023, the Swiss Council of States decided to follow up on a parliamentary initiative to enter cyberharassment as an offence in the Penal Code.

⁵¹ The T-CY mapping study on cyberviolence is available in English here: <https://rm.coe.int/t-cy-2017-10-cbg-study-provisional/16808c4914>

⁵² Legislative resolution of the European Parliament of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU: www.europarl.europa.eu/doceo/document/TA-9-2024-0137_EN.html#top

⁵³ See : www.ejustice.just.fgov.be/mopdf/1998/12/17_1.pdf#page=1

⁵⁴ Under this article, “only the person who uses an electronic communication network or service or other means of electronic communication in order to harass their correspondent or to cause damage, and the person who installs any device intended to commit the aforementioned offence in an attempt to commit it, is punishable by a fine of EUR 50 to EUR 300 and imprisonment of fifteen days to 2 years or one of these penalties.”

Who should you turn to?

Several organisations provide support to women who are victims of cyberharassment. The aim is to create a safer digital environment for women that are exposed to cyberharassment. For example:

FOR TRAINING PURPOSES



INTERNATIONAL
WOMEN'S MEDIA
FOUNDATION

International Women's Media Foundation (IWMF) provides digital security training specifically designed for female journalists to protect them from online threats.



REPORTERS
SANS FRONTIÈRES

Reporters without borders (RSF) also provides training and resources to help journalists protect themselves online.

FOR HANDS-ON SUPPORT

FOR VICTIMS IN SWITZERLAND



Schweizerische Kriminalprävention
Prévention Suisse de la Criminalité
Prevenzione Svizzera della Criminalità

For practical assistance for victims in Switzerland, the **Swiss Crime Prevention (PSC)**, has published a brochure⁵⁵ in the event of repeated cyberbullying. It also advises individuals to contact a victim assistance centre or a youth assistance service to determine whether a complaint should be made⁵⁶. Similarly, the Canton of Geneva has issued a link to a platform for reporting cyberharassment⁵⁷.

But effectively combating cyberbullying requires online platforms to strengthen their moderation and sanction policies, by improving the detection of hateful content and making reporting systems more effective.

⁵⁵ PSC, Cyberbullying: What to do, February 2017, resource in French : www.skppsc.ch/fr/wp-content/uploads/sites/5/2016/12/cybermobbing_fr.pdf

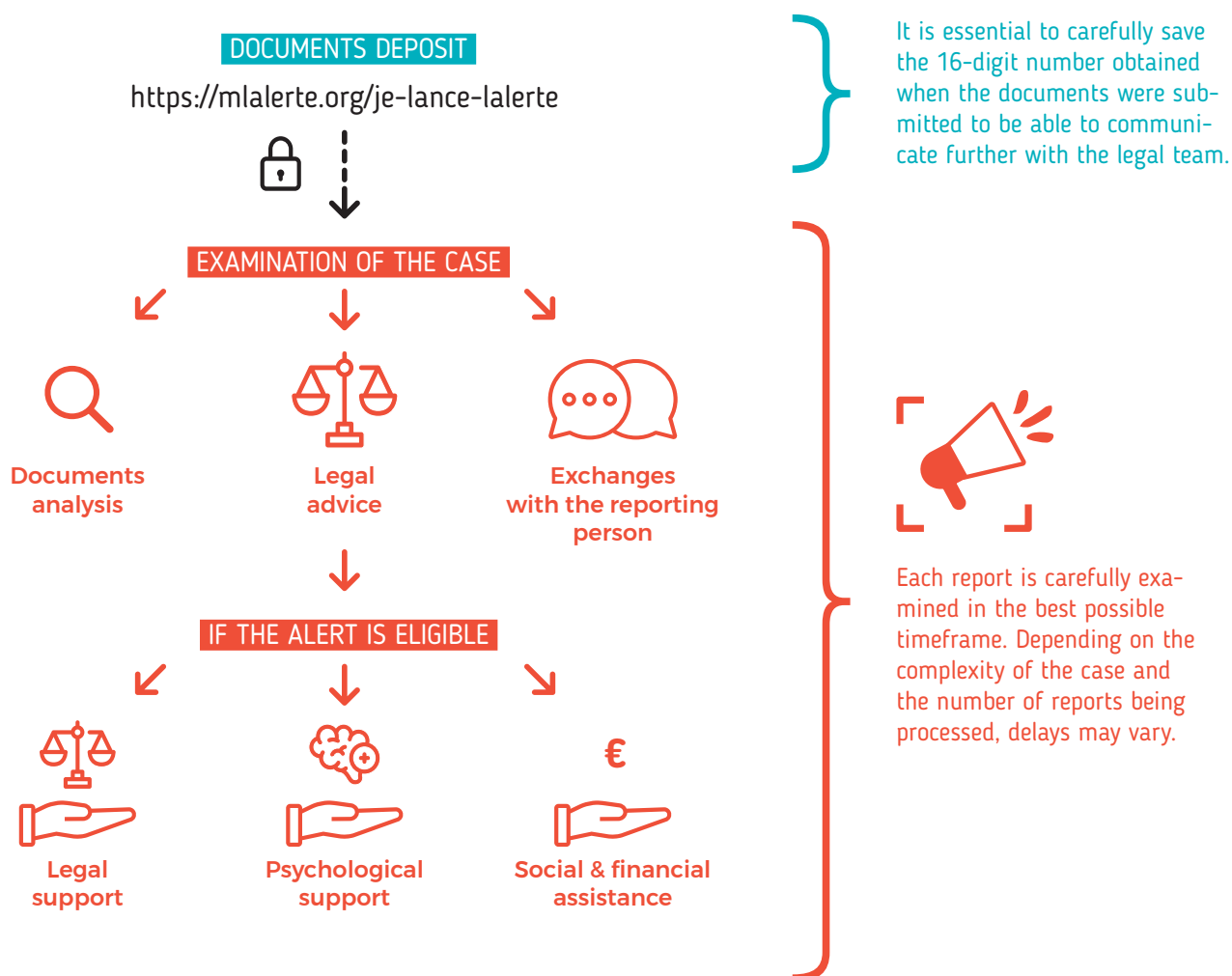
⁵⁶ Swiss Victim Support website: www.aide-aux-victimes.ch/en/

⁵⁷ Click the "Comment dénoncer un cas" (How to report a case) tab, resource in French" : www.ge.ch/cyberharcelement

Whistleblowers, how do you contact the Maison des Lanceurs d'Alerte?

The Maison des Lanceurs d'Alerte is an association established under the law of 1901 to support whistleblowers and defend their rights. If you want to make a report, you can contact the Maison des Lanceurs d'Alerte through a secure and confidential platform.

You will be asked to complete a form detailing the facts that you are reporting and any reprisals you may have suffered. Following an initial analysis of your application, a lawyer will contact you to guide you through the procedure. We recommend that you contact the MLA as soon as possible.



For a list of competent authorities and associations in Belgium and Switzerland, see pages 45 to 49.

3. As a **journalist**, I redirect the whistleblower to the competent authorities and organisations

Journalists play a special role for whistleblowers because sometimes they are the only people they can trust. In order to protect them, journalists need to be familiar with the law so that they do not put the whistleblower at risk and can adequately redirect them to the relevant organisations.

In France, internal reporting (to your superiors, management, human resources) is no longer mandatory, but referral to a **competent external authority remains mandatory**. This ensures the process is correctly completed (see practical guide 1). A complete list of these authorities can be found in the Wasserman Act Enforcement Decree annex (see Annex 4). Some authorities are not included in this decree, but it may still be relevant to refer to them (see practical guides 2, 3, 4 and 5).

4. As **Journalists** and **whistleblowers**, I must respect public disclosure deadlines

In practise, obtaining, and above all maintaining a whistleblower status is dependent on conforming to a specific procedure and deadlines.

In particular, you must have had prior contact with an **external authority before going public. Publishing an article before the legal deadline has elapsed may result in the loss of protection associated with a whistleblower status, specifically the exemption of civil and criminal liability.**

It is essential to be familiar with the deadlines, standards and exceptions, to avoid being targeted by defamation claims. The European Directive has set minimum standards. It is important to understand the specificities of national law as transposition of the Directive differs in France and Belgium. Swiss case differs as legislation varies according to the cantons.



ATTENTION

The idea of “public disclosure” is understood in its broadest sense.

This not only includes communication via social networks or the media (radio, print, online media, etc.), but also website creation relating to the case or the distribution of leaflets.

In France

In order to determine the applicable deadlines and conditions, you must ensure which version of the Sapin II law the whistleblower is subject to (pre or post 21 March 2022, which is the date of the adoption of the Wasserman Act, which amends the criteria for public disclosure).

It is essential that you comply with the statutory deadlines, in order to maintain the status of whistleblower and the relevant protection.

There are two possible outcomes, which are outlined below:

Scenario n°1

If the whistleblower is subject to the Sapin II law in force between December 9, 2016, to March 21, 2022 ⁵⁸

● In principle

you can resort to public disclosure if **the whistleblower has followed the steps of the mandatory procedure, i.e.:**

- **FIRST** a mandatory internal report.
- **PUIS**, in the absence of due diligence within a reasonable time-frame, an external report (legal authority/administrative authority/professional organisations) **that was not addressed for over three months.**
- **Public disclosure THEN becomes a “last resort” once the deadline has elapsed.**

● Exception

In the event of a serious and imminent danger, or in the presence of risk of irreversible damage, the report may be made public directly (thus without delay, and without prior reference to external authorities)



The facts, information or documents, whatever their form or publication medium, covered by national defence secrecy, medical secrecy or the confidential relationship between a lawyer and their client, are excluded from the whistleblowing regime and may not therefore be disclosed to the public.

⁵⁸ The applicable version will be that which was in force at the time the events occurred. If at least one of the retaliatory measures occurred after September 01, 2022 (date of entry into force of the Wasserman Act of March 21, 2022), then the applicable law is the Sapin II law as amended by the Wasserman Act.

Scenario n°2

If the whistleblower is subject to the amended Sapin II law, in force as of March 21, 2022:

● In principle

In principle, the whistleblower must have made an external report, to a competent authority designated by the decree of 3 October 2022⁵⁹, and possibly internal (the latter being no longer mandatory).

- Public disclosure may then legally occur **within 6 and a half months** if no appropriate measures have been implemented to remedy the exposed facts following referral to a competent external authority.

● Exception

Public disclosure may, by exception, occur without prior external reporting in the following situations:

- If the alert occurs **in the workplace**, in the event of imminent or obvious danger to the general interest, in particular in the event of an emergency or a risk of irreversible harm⁶⁰.
- If the whistleblower is concerned about the risk of reprisal⁶¹; by making an external report;
- If public exposure would resolve the situation you wish to expose (this may be the case if evidence could be destroyed or hidden, or if you have serious reason to believe that the competent authority and the facts you want to denounce are in conflict of interest).



The facts, information and documents, whatever their form or publication medium, the revelation or disclosure of which is prohibited by provisions relating to national defence secrecy, medical secrecy or the secrecy of the deliberations of the court, the confidentiality of legal investigations or the confidential relationship between a lawyer and their client, are excluded from the whistleblowing regime and may not therefore be disclosed to the public.

TO SUMMARISE, IN PRACTISE:

- Due to the guarantees they present, **it is advisable for whistleblowers to contact the relevant authorities BEFORE** any exposure takes place; then wait at least 6 MONTHS AND 1 WEEK before publicly revealing the information.
- It is advisable to always contact the human rights defender [See practical guide 2], ideally to request protection and guidance. This allows you to “tick” the mandatory checkbox on the external report, and to delay the public disclosure deadline.
- BUT if there is a **risk of reprisal/conflict of interest/concealment of evidence** by the external authority, it is advisable not to contact them.
- FINALLY, disclosure can take place without prior external reporting:
 - If the exposure occurs within the workplace, **in the event of imminent or manifest danger to the general interest**. For example: urgency or risk of irreversible harm.
 - Outside of the workplace, in case of serious and imminent danger

⁵⁹ Referral to a human rights defender, judicial authority or a competent European Union body is also possible.

⁶⁰ Please note: outside the workplace, the danger must be serious and imminent; in any case, the notions of “clear and present danger” / “serious and imminent danger” are interpreted restrictively. It is always advisable to seek the advice of an organisation such as the MLA or a lawyer, before disclosing your exposure to the public..

⁶¹ For a list of reprisals, see section 9 of the Sapin II law. For example: suspension, redundancy, dismissal, disciplinary measures, intimidation, harassment, discrimination, etc.

In Belgium

It is important to firstly distinguish between federal and federated authorities. There are several whistleblower organisations, depending on the sector covered by the exposure. The extent of their remit and power varies according to the authority. In accordance with the European Directive⁶², an acknowledgement of receipt must be sent within one week of contact with an authority, and a response must be provided within three to six months depending on the complexity of the report. As a precaution, we recommend waiting six months and one week before proceeding with public exposure.

● Federal Institute for the protection and promotion of Human Rights (IFDH)⁶³

An independent public institution. The Institute provides legal, psychological, media, socio-professional and technical support to whistleblowers following public exposure. The Institute is only competent in federal matters.

● At federated level

There are external reporting channels available via regional mediators. However, regional mediators are unable to provide legal, psychological and media support; they only act on the receipt of reports.

For example: education varies according per region in Belgium. Thus, a teacher who wants to make a report will have to speak to the regional mediator, but he or she will not be able to benefit from the support measures proposed at federal level.

● Federal Ombudsman's Centre for Integrity

A confidential review of reports relating to breaches of integrity and violations of legislation in a work-related context.

YOU CAN MAKE A REPORT USING ONE OF THE FOLLOWING:

● An online form:

www.federaalombudsman.be/fr/formulairesignalement

● By e-mail: integrite@mediateurfederal.be

● By appointment

E-mail integrite@mediateurfederal.be or call 0800 999 61 to schedule an appointment with a member of the Integrity Centre.

The aim of the Integrity Centre is to **protect whistleblowers from reprisals**. Protection status lasts 3 years from the end of the investigation, or after a court decision having acquired the authority of res judicata. During this period, the whistleblower may challenge any reprisal measures or request to be temporarily included in another service or administration.

THE ROLE AND POWERS OF THE INTEGRITY CENTRE DIFFER ACCORDING TO THE SECTOR INVOLVED:

● In the federal public sector:

- Receipt and review of reports involving breaches of integrity in federal public bodies: abuse, fraud, favouritism or malpractice;
- The centre may conduct investigations and prepare reports containing recommendations.

● In the private sector:

- Receipt, review and co-ordination of reports of violations of the law within companies;
- In principle, no investigative power;
- Transmission of reports to the competent authorities that are responsible for conducting the investigation.

! You cannot make an anonymous report.

⁶² For internal reporting, see Article 9 § 1, point F: "a reasonable deadline to provide feedback, not exceeding 3 months from the date of acknowledgement of receipt of the report or, in the absence of acknowledgement sent to the author of the report, 3 months from the expiration of the 7-day period following the report." For external exposure, see Article 11 § 2, point D: "a response within a reasonable timeframe, not exceeding 3 months, or 6 six months in duly justified cases". Article 15 of the Directive provides for public disclosure.

⁶³ <https://institutfederaaldroitshumains.be/en/accueil>

● Ombudsman of the German-speaking Community of Belgium

The Ombudsman of the German-speaking Community of Belgium (*Ombuddienst der Deutschsprachigen Gemeinschaft Belgians*) is competent to receive and review reports from public and local government officials alerting them to offences within their administrations, as well as reports from individuals regarding violations in the public administration workplace, local authorities or any institution that is largely funded or controlled by them when European interests are at stake.

REPORTS ARE TO BE MADE VIA AN ONLINE FORM:

www.dg-ombudsdienst.be/fr/soumettre_une_alerte

Following the report: if the report is serious and relevant, the mediator may conduct an investigation, or forward it to other authorities, such as the police. As part of its investigations, the mediator may:

- require the administration to answer questions within a specified time;
- obtain all necessary documents;
- interview all affected persons. As a result, any professional, official, or economic confidentiality to which respondents would be bound by is waived.



Anonymous reports are not accepted.

The mediator has no direct sanction power, but has the opportunity to recommend that the supervisory administration impose such sanctions on local authorities or other involved institutions. However, it has a power of protection:

- Individuals who are employees of the targeted entity can sign a “*Protocol of Agreement on Safeguards*” with the relevant administration. This means there will be a suspension of disciplinary proceedings, a reversal of the burden of proof, and the possibility for the plaintiff to be transferred to another department within the same administration;
- Other reporting individuals do not have any protection power, they will simply be put in contact with the authorities responsible for protecting against reprisals.

● The office of the Flemish Ombudsman

The office of the Flemish Ombudsman (*Vlaamse Ombuddienst*) acts as an external reporting channel. Its mission is to receive and process reports related to the Flemish administration and its services. It has jurisdiction to examine reports made by officers of administrative authorities who have been made aware, in the course of their work, of malpractice, abuse or crimes within their institution. Although it cannot issue sanctions, it may make recommendations regarding punitive measures to the relevant government authority or to the competent ministry.

The Ombudsman may grant a whistleblower status, valid for 2 years after the conclusion of his investigation. During this period, the whistleblower will not be subject to disciplinary action related to the case. Any ongoing disciplinary procedures will be suspended during the Ombudsman’s investigation. In the event of reprisal, the Ombudsman may ask the relevant administration to terminate disciplinary action where necessary. At their request, the whistleblower can also be transferred to another department.



Anonymous reports are accepted.

In Switzerland

Switzerland is not part of the European Union, so it is not subject to the Directive 2019 protecting whistleblowers.

In Switzerland, there isn't a general regime in place. Laws vary according to the cantons, and we would recommend consulting a specialised organisation or lawyer before proceeding with any disclosure. Nevertheless, some authorities have put in place provisions to receive reports.

This is the case of the **Swiss Federal Audit Office** ⁶⁴, which has a secure external platform ⁶⁵ to report any suspicion of malpractice, corruption, indiscretion or illegal activity. Whistleblowers can share information and documents anonymously, without the possibility messages being traced.

In the canton of Geneva, a group of external authorities have been designated by law to receive and process reports.

Specific protection: Loi sur la protection des lanceurs d'alerte au sein du canton de Geneve (Law on the Protection of Whistle- blowers within the canton of Geneva)

At the cantonal level, the Canton of Geneva adopted a Law on the Protection of Whistleblowers in the State of Geneva (LPLA) which entered into force on 26 March 2022.

FRAMEWORK

The law applies to all employees of all cantonal administrations and departments, the State Chancellery, the Grand Council, all communal authorities, the University of Geneva, the specialised high school of Western Switzerland and the other autonomous public institutions of the canton.

A GUIDE TO WHISTLE-BLOWING:

- Prior internal reporting: you must first make your report to your superiors;
- External reporting: external reporting may occur either in cases where reporting to your superiors is not possible (especially if they are involved) or if the facts have already been reported to your superiors and no action has been taken.

WHO SHOULD YOU CONTACT?

- One of the organisations specified on a set liste ⁶⁶, depending on the location you are making the report from;
- The Geneva Trust Group ⁶⁷
- The employer's internal supervisory body (if any).
- The internal audit service of the State of Geneva ⁶⁸, if this is the employer's internal supervisory body
- The Court of Auditors



The **trust group of the Canton of Geneva** is an independent organisation within the State of Geneva. It provides an anonymous reporting facility, ensuring protection for whistleblowers, is available for all legal matters and ensures that whistleblowers do not suffer any professional damage.

⁶⁴ Swiss Federal Audit Office: Access the whistleblower reporting platform here: www.efk.admin.ch/en/lanceurs-dalerte-whistleblowing

⁶⁵ Access the whistleblower reporting platform here: www.bkms-system.ch/bkwebanon/report/clientInfo?cin=5efk11&c=-1&language=eng

⁶⁶ Trusted groups, List of Alert Processing Entities and Protection methods available to whistleblowers, 3 March 2025

⁶⁷ The Geneva Trust Group: www.ge.ch/organisation/groupe-confiance

⁶⁸ Internal audit service of the State of Geneva : <https://justice.ge.ch/justice/fr/contenu/audit-interne>



Sometimes a relationship of trust can be strained, for both sides. The key is transparent communication.

04.



Working hand in hand to reveal the truth

①

As a whistleblower,
I am respectful of the different
stages of the investigation.
(50)

②

As a journalist,
I remain vigilant throughout
my investigation
(51)

1. As a whistleblower, I am respectful of the different stages of the investigation

I transfer all the elements in my possession

Once a relationship of trust has been established with the journalist, we recommend providing them with all necessary elements. These may include documents, contact details for witnesses who would agree to speak publicly, even anonymously, and could corroborate the report, or even provide new information.

To facilitate the journalist's work, they may also welcome you sharing information that is not evidence of illegal facts as such but allows for a better understanding of the decision-making process. For example, the company organisational chart, board reports, team meetings, financial reports, etc.

I will be patient if the investigation takes time

The journalist's job is to investigate the story independently, in addition to the material provided by the source. Knowing where to look will make the journalist's work easier and allow them to find information, which corroborates the evidence. This is also a way to protect the whistleblower.

In compliance with the right to be heard, journalists will contact the relevant company or public institution to hear their side of the story, before they publish their findings. This usually includes a series of questions that are addressed to the relevant entities, to offer them the opportunity to provide further information, prior to the details being made public. Even though this may be concerning to the whistleblower, it is an unavoidable step, it is in the interest of the investigation and therefore the credibility of the information that will be made public. The whistleblower cannot oppose it but could request that anonymity be maintained during this phase.

Publishing a report can take time. Publication will occur at the most appropriate time in terms of media visibility. Last-minute "*controversial*" news (minister cabinet reshuffle, natural disaster, etc) could have a damaging impact on a planned release date. This is obviously frustrating at the time, but postponing the publication will also allow for better media coverage at a later date.

2. As a **journalist**, I remain vigilant throughout my investigation

I maintain confidentiality in my story

Vigilance over confidentiality is not limited to exchanges with the source but must continue within the editorial staff and in the surrounding area.

Ensuring confidentiality isn't limited to exchanges with your source but must also include the editorial staff and your close contacts. Internally, the same precautions should apply. Do not use names, and use code names, especially in email communications.

It may be wise to have a computer in your workplace that will only be used for your research, so nothing is traced back to your personal computer.

I ensure anonymity when requested

If there is clear legal framework, anonymity can take several forms:

- Neither the name nor any element identifying the person (job function) are mentioned;
- Images of the person are back or blurred;
- Their voice is altered.

It is common practice for companies that are responsible for the malpractice to search for and threaten employees that have shared information with journalists. They refer to them as a “mole”, identifying them as suspicious and requiring interrogating.

New issues related to source privacy and security are emerging with the development of artificial intelligence. Software is now being used to identify sources ⁶⁹.

I make sure my story is proofread

Proofreading is essential to ensure the accuracy of the information provided and guarantee the whistleblower's continued consent. Radio or video content should also be listened to or re-watched. Given the professional and personal risks incurred by the whistleblower, they benefit from the right to retract their testimony at any moment.

By keeping source and/or the whistleblower informed of the progress of the investigation, by reassuring them with regards to their exposure and what will happen once the story is published, the journalist will reinforce the element of trust and prevent any reluctance to publicise the facts.

To prepare for and prevent complaints upon publication, **it is possible to have a publication reviewed by a lawyer, to assess and reduce potential risks.** Without having to censor the content of an investigation, using careful wording can defuse potential lawsuits. However, calling upon a team of lawyers has a significant financial cost. One way editors can reduce the risk of being sued is by ensuring journalists have access to continuous professional development.

Tools and training are key in the fight to protect sources and whistleblowers. Access to data protection tools may be more costly for freelancers or temporary journalists, and ease of access may vary depending on the editors.

69 Radio France, *Artificial Intelligence: A threat to the anonymization of journalists' sources?* podcast in French, published May 22, 2024



After weeks or even months of work and waiting, the investigation is complete and ready for public release. But you should still remain vigilant.

05.



Publication

①

As a journalist, I will only publish my story if everything is ready and choose the most suitable time to go public.

(54)

②

As a whistleblower, I am prepared to receive interview requests

(54)

③

As a whistleblower, I remain calm under pressure

(57)

1. As a **journalist**, I will only publish my story if everything is ready and choose the most suitable time to go public.

In the event of delay, I will update the whistleblower.

You had agreed a publication date with the whistleblower, but as the date nears, a breaking national or international event occurs and takes full media coverage, so your editor decides to postpone publication. Or perhaps you need more time to finish editing your story or podcast, or to analyse more data. In any event, you should inform the whistleblower as soon as possible and explain the reasons for the delay. This not only builds a relationship based on trust, but also means the whistleblower isn't caught off guard.

2. As a **whistleblower**, I am prepared to receive interview requests

Once the report has been published, other media will be interested in the case and will be requesting interviews. Media exposure, cameras and increasing requests can generate stress. Unlike the initial investigation that was conducted over a longer period of time with numerous exchanges, interviews at this stage are often shorter and concise. Whether it is a live or recorded interview, a video or written article, it still requires careful preparation. It will allow you to structure your speech, gain confidence, and manage the emotional burden better, making it easier to speak in a more serene and controlled manner.



If you do not feel ready or comfortable with additional media exposure, you are entitled to decline interviews. Take the time to think and assess whether these requests correspond to your needs and expectations. For example, if the reported facts ceased after the initial publication, further investigation may not be required. But, if the wrongdoings persist, every interview can be an opportunity to reach out to a new audience and ensure that your story isn't forgotten about..

PRIOR TO THE INTERVIEW



#01 Ask for clarification on the interview format in advance

What is the format of the interview? The duration? Will it be live or recorded? Who is the journalist? Will anyone else be there? Will the subject focus on personal experience or a specific aspect of the story?

#02 Prepare for questions that may be asked

The simplest thing is to ask the journalist for their questions in advance. Some will accept, others will be more vague. In any event, it is best to prepare some answers to questions that may be asked and practise answering them.

#03 State what you do not want to discuss

If certain aspects of the case are too painful to discuss or may complicate things (especially if they are covered by ongoing legal proceedings), you should inform the journalist prior to the interview. They will then be able to adjust the interview accordingly.

#04 Listen to the programme in advance

For TV or radio programmes, listen to at least one programme before your interview to familiarise yourself with the format, the tone; and the manner the interview is conducted. This will give you a better idea of the pace and helps to prepare for the dynamics of the interview. échanges et aide à anticiper la dynamique de l'entretien.

#05 Structure your speech.

A good structure will make it easier to understand and improve the impact of the interview. One effective method is to prepare three key messages, each with a concrete example. Formulating short, direct sentences avoids confusion and enhances the impact of your message. When encrypted data can support a comment, it is best to have it in mind or noted and to hand.

#06 Practise before the interview with a person you trust

This will allow you to test the clarity and fluidity of your answers. An outside perspective also helps to identify potential awkward or inaccurate formulations, allowing you to refine accordingly.

#07 Avoid professional jargon

Technical terms, acronyms, or overly specific vocabulary might not be understood by the general public. You must adapt your language and explain complex concepts where necessary. The aim is to make information accessible without distorting it.

#08 Train yourself to be confidential when sharing information orally

If the interview is recorded or broadcast live, it is crucial to be cautious when sharing information. Not mentioning specific names, places, or details to identify those involved is an essential precaution, especially in order to avoid defamation suits.

#09 Protect your anonymity

If anonymity was chosen previously, it is important to discuss protective measures with the journalist. If anonymity cannot be guaranteed, it is best to decline the interview.

#10 Ask for help

If you are getting support from the Maison des Lanceurs d'Alerte (MLA), support may be provided before, during and after the interview. This may include advice on preparing or reviewing a written testimony. Don't hesitate to ask for this support so you can speak as confidently as possible.

DURING THE INTERVIEW



#01 Arrive early for your interview

Arriving a little before the start of the interview will ensure you don't feel too rushed. You can familiarise yourself with your surroundings, take time to prepare yourself mentally and deal with potential technical issues.

#02 Ask for clarification if necessary

If a question is not clear, ask the journalist to reword it.

#03 Only answer questions that fall within your area of expertise

Stick to what you know to avoid potential libel suits and concentrate on the message you want to share.

#04 Take your time when answering

Take your time to think about what you want to say before answering. This will allow you to organise your ideas and formulate a more structured response.

#05 Ensure you have good sound quality for telephone interviews.

Ensure that the microphone is not obstructed (try not to cover it with your hair or fingers), and avoid background noise (footsteps, rustling papers). Find somewhere quiet and use headphones or earphones to ensure good sound quality.



If even after preparing for an interview, you do not want to take part, but you still want your story to be published, other people can speak on your behalf:

- Your lawyer;
- The Maison des Lanceurs d'Alerte (if you are receiving support from them);
- The investigative journalist who initiated your case.

You also have the option of responding in writing. However, it may be that the journalists who had contacted you decide not to continue their media coverage if they consider that the conditions on offer do not match their editorial approach.

3. As a whistleblower, I remain calm under pressure

The Maison des Lanceurs d'Alerte has contacted several whistleblowers to learn more about their experience following the publication of their story. Here are four issues that were particularly difficult to manage:

1. I wasn't contacted once my story had been published.

The news is constantly changing, and many events, both international and domestic, can quickly overshadow lesser-known or local issues. Let's take 2024 as an example. Events such as the US presidential election, France's early general election, and the Olympic Games received extensive media coverage. Even though understanding media dynamics is essential when choosing the right time to publish a report, sometimes, even with careful planning, your story may not capture the media attention as much as you'd hoped.

In some cases, no journalists will contact the whistleblower once the investigation is published, which can be a huge disappointment. This does not call into question the relevance of the alert or the severity of the facts being denounced but can lead to frustration and misunderstanding when faced with a lack of media coverage.

2. Going public did not solve the issue I was exposing.

Although some cases receive extensive media coverage and whistleblowers are contacted by multiple journalists, this attention does not always translate into concrete action by the authorities to put an end to the reported wrongdoing. This creates a sense of loneliness and powerlessness for the whistleblower, who may get the impression that all their effort was in vain.

3. I was not prepared media (over) exposure.

Whistleblowers are primarily motivated by the need to put an end to the abuse or injustice they have observed. However, once their alert is publicised, they may find themselves in an unexpected position, one where they are perceived as public figures. This newfound attention may be uncomfortable for some people who do not want to be in the spotlight.

In extreme cases, some whistleblowers are contacted through their personal or professional networks (such as their social networks) receiving unwanted attention that can generate additional stress. This may also expose them to malicious comments or accusations from people outside the case, who will label them as informers.

4. My identity was revealed when I wanted to remain anonymous.

As a whistleblower, it is important to understand that regardless of the careful work of the journalist you work with, there is always a risk that your identity may be revealed. This could be by the accused party, or another media source. If this happens, you can take legal action for breach of anonymity. The Wasserman law guarantees that the identity of whistleblowers cannot be disclosed without their consent. However, this protection is only effective if legal procedures have been rigorously followed.

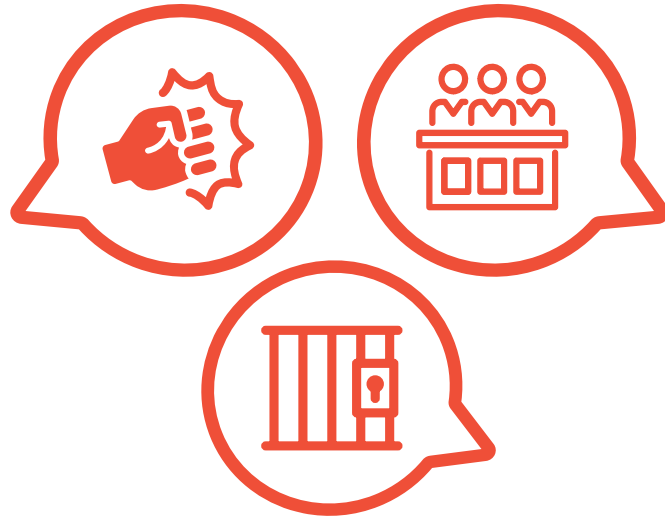
Tips for dealing with these situations and keeping your cool:

- Surround yourself with the right people. Don't isolate yourself.
- Seek professional help and support. This could be from psychologists or legal professionals.



Increasingly aggressive methods are being used to discourage reporting. Threats, verbal and/or physical aggression, cyberharassment, lawsuits... journalists and whistleblowers take significant risks to reveal the truth.

06.



Responding to threats or lawsuits

①

As a journalist and whistleblower, you must respect public disclosure deadlines
(60)

②

As a journalist I am at risk of being threatened during my investigation
(64)

1. As a **journalist** and **whistleblower**, you must respect public disclosure deadlines

In recent years, **the number of lawsuits filed against whistleblowers and journalists that were making use of their freedom of expression and information to fuel public debate are increasing**, hindering the public's access to information. **"SLAPP" suits are a legal strategy to intimidate and censor journalists or critics**, thereby hindering their ability to participate in public debate by subjecting them to long and costly trials, which can have a deterrent effect within civil society. As such, they are not aimed at achieving a legal victory, but at censorship and even self-censorship.

What is a SLAPP suit

A review of the SLAPP proceedings initiated in France over the past twenty years showed that the most frequently cited ground is defamation (applies to 50% of proceedings since the early 2000s). But other cases are emerging and are becoming increasingly common, in particular based on the breach of confidentiality as protected by law. These proceedings originate from an array of instigators.



SEE ANNEX 3 : TRADE SECRETS IN FRANCE
SEE PRACTICAL GUIDE 5 : DEFAMATION IN FRANCE

Non-exclusive list of legal grounds used in SLAPP suits in France in recent years:

- Defamation;
- Public defamation on the basis of a person in a position of public authority;
- Public slander;
- Breach of business confidentiality;
- Infringement/compromising national defence secrecy;
- Infringement of the presumption of innocence;
- Trademark infringement;
- Business defamation;
- Economic damage;
- Invasion of privacy;
- Violation of ownership rights.

Organisations that are likely initiate SLAPP suits:

- **PUBLIC ENTITIES**
 - Law enforcement agencies (usually involving custody);
 - French Gendarmerie;
 - Public prosecutor;
 - French State (including Ministry of the Armed Forces);
 - Local elected officials (mayors).
- **PRIVATE ENTITIES**
 - CEOs of French companies;
 - Businessmen/women;
 - Multinational companies;
 - Organisations (including agri-food lobbies);
 - Political leaders.

What the law says... for now

Directive (EU) 2024/1069 of the European Parliament and of the Council adopted on 11 April 2024⁷⁰ (see section 1) aims to unify the rules addressing procedures that distort public debate in Europe. It provides that victims of proceedings have access to comprehensive information on assistance, including financial, legal and psychological measures, available via a dedicated information centre. The Directive covers “*matters of a civil or commercial nature with cross-border implications brought in civil proceedings, [...] whatever the nature of the court or tribunal*”. This definition includes interim proceedings and requests for interim measures. It is particularly interesting in light of certain proceedings in France in recent years, such as the case brought before the Nanterre commercial court by the Altice group on the protection of business secrecy against the media outlet Reflets.info in October 2022. This resulted in an order being issued that prohibited the media outlet from publishing further information about Altice⁷¹.

With regard to proceedings outside the EU, **the Directive requires European countries to ensure that decisions made by third countries against persons or organisations domiciled in the EU are not recognised.** They may seek compensation for related costs and damages in their national jurisdiction.

Today, the legal reality is as follows: **There is no specific framework to fight proceedings in France, Belgium or Switzerland.**

Please note:

In France, the penalties for these procedures, where they exist, are particularly weak or inadequate. Moreover, journalists that are the subject of SLAPP suits have no guaranteed access to reparation. Therefore, these penalties do not play the deterrent role that they should for perpetrators of criminal proceedings.

In Belgium, penalties for abusive legal proceedings are also provided for by law. An interesting feature of the Law of 30 July 2018 on the Protection of Business Secrecy, transposing the 2016 European Directive, provides for **the refusal of any legal action** brought against a right to freedom of expression and information established in the rules of conventional and constitutional law, or **against a revelation of misconduct, wrongdoing or activity deemed illegal, with the aim of protecting the general public interest. In other words, a legal action against a whistleblower.** This provision has the **merit of trying, not to sanction a SLAPP suit, but to prevent it**, which is more easily reprehensible and can be invoked in court.

In Switzerland, apart from the canton of Geneva, there are no specific procedures to protect whistleblowers and journalists from SLAPP suits. As it stands, **we must therefore turn to the Swiss case law**, or the Council of Europe law. A recent decision by the Berne-Mitteland Regional Court acquitted authors of a report who were sued for defamation by Kolmar Group AG, recognising both the reliability of the investigative work - based on numerous sources - and the public interest purpose pursued by the NGO as part of the publication. Since Switzerland is not subject to EU law, neither the 2019 Directive on the protection for whistleblowers, nor the 2024 Directive against SLAPP suits apply, but the **case law of the European Court of Human Rights, which establishes minimum standards of protection, can be utilised where Swiss law is insufficient.**

⁷⁰ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), 546 votes in favour and 47 votes against.

⁷¹ Patrick Drahi won't silence us!, *Le Club de Mediapart*, 10 oct. 2022. ; F. Bonnet, Patrick Drahi loses, a victory for investigative journalism, *Fonds pour une Presse Libre*, February 6 2023. Articles in French.

Examples of SLAPP suits

● Breach of business confidentiality

Patrick Drahi v. Reflets.info: an initial situation of censorship; then a victory on appeal

● Background:

The online media outlet Reflets.info was the subject of repeated SLAPP suits by billionaire businessman Patrick Drahi. Reflets.info detailed “financial montages, colossal expenditures, excessive tax optimisation,” in their articles, relaying revelations from documents published online by the ransomware group

● Legal proceedings:

- On October 6, 2022, the judge of the Court of Commerce of Nanterre prohibited the online investigative website from publishing “new information” on Patrick Drahi’s company. The published articles would have been detrimental to the companies’ success. **This is the first time in France that the law of 30 July 2018 is applied to a media outlet.** The court’s decision raised questions. The articles that were already published had not been found to violate business secrecy were not withdrawn, but future publications were prohibited.

- On 19 January 2023, the Versailles Court of Appeal altered their ruling. The decision, long reasoned, reaffirms that **law on the protection of business secrecy does not apply to the profession of journalists** but rather applies to the protection of business and trade secrecy.

IN FRANCE, THERE ARE MANY EXAMPLES. WE HAVE CHOSEN TO ILLUSTRATE TWO SPECIFIC CASES OF BREACHES OF CONFIDENTIALITY.

● Infringement or compromising national defence secrecy

Ariane Lavrilleux, 39 hours spent in police custody for her investigative work

The case of the journalist Ariane Lavrilleux is an example of an abuse of process and a serious infringement of the rights of the defendant.

● Background:

Following her investigation in 2023 into a contract involving the sale of arms between France and Egypt, the journalist was held in police custody for 39 hours and her home was searched. The journalist was not informed of the charges against her and her lawyers were unable to access the transcript of the investigation. [See practical guide 6: Rights in police custody in France].

● Impact:

This case got a lot of attention from the public and journalists alike due to the sensitive nature of the story, the involvement of the state, and the seriousness of the reprisals. The media also denounced this case as a violation of the protection of source secrecy⁷². The International Federation of Human Rights was able to call these reprisals “legal harassment”⁷³.

In her address to the European Parliament on 17 October 2024, Ariane Lavrilleux explained: “My detention was not an accident, nor an unexpected slip. It was allowed by recent laws and diversion of anti-terrorism measures that have damaged our European principles, media freedom, and citizens’ right to information.”⁷⁴.

● Legal proceedings:

Ariane Lavrilleux was not investigated for “appropriation and disclosure of national defence secrets”. In January 2025, she was granted the status of “assisted witness” as part of the ongoing investigation into Disclose and the violations of defence secrecy.

Examples of SLAPP suits in Switzerland

● Provisional measures

Provisional measures are a form of prior censorship. These civil procedures allow judges to prohibit publication or order the withdrawal of an article, without consulting the journalists. This is considered a preventative measure.

Agefi vs. Flowbank

● Background:

In May 2023, the media outlet Agefi published an article on Flowbank, related to the company's annual report and legal compliance. Flowbank's director, along with his lawyer, requested that the article be published with the title *"Flowbank to make a profit in 2023"* which Agefi refused to do.

● Legal proceedings:

Immediately following the publication of the article, the Civil Tribunal of Geneva enforced its withdrawal. The case went to court, and the provisional withdrawal was confirmed. A few days later, Flowbank went bankrupt, allowing the newspaper to speed up the appeal process. Agefi eventually obtained permission to publish their article.

Criminal measures

In addition to provisional measures, criminal measures are used in an attempt to exhaust journalists in a *"war of attrition."*

- More generally, *"a progressive erosion of the principle of transparency"*, specifically at federal level.

IN SWITZERLAND, ADDITIONAL LEGAL RECOURSE IS AVAILABLE

● Breach of banking secrecy

Article 47 of the banking regulation act provides criminal penalties for journalists in the event of disclosure of illegally obtained bank information.

The case of Rudolf Elmer⁷⁵

● Background:

Rudolf Elmer worked for Swiss bank Julius Bär in the Cayman Islands. He disclosed information, including facts related to his employer's tax evasion.

● Legal proceedings:

Rudolf Elmer endured a long court battle against Swiss banking secrecy. He was subject to 48 prosecution interrogations, 70 court rulings, and sentenced to a 14-month suspended prison term. He spent 220 days in prison, including 6 months in isolation.

He was finally released on appeal by the Supreme Court of the Canton of Zurich. The decision was confirmed by the Criminal Chamber of the Swiss Supreme Court on 10 October 2018. It ruled that employment contracts governed by extraterritorial law would oppose the application of Swiss banking secrecy, and the use of that secrecy to silence whistleblowers. **It clarified the territorial application of Swiss banking secrecy, providing some relief to the whistleblower.**

⁷² Related article from Le Monde: Yann Bouchez, From Ariane Lavrilleux police custody to wiretapping, where press freedom is monitored, published on 30 September 2023

⁷³ FIDH, France: The legal harassment against journalist Ariane Lavrilleux is an inadmissible assault on press freedom, article in French, published on 22 September 2023

⁷⁴ Disclose, Ariane Lavrilleux to the European Parliament: "France encourages spying on journalists", video in English, published on 20 October 2023

⁷⁵ Source: "Whistleblower Rudolf Elmer's court victory: the long arm of Swiss secrecy law gets shorter", Tax Justice Network, Naomi Fowler, 30 October 2018. See: Whistleblower Rudolf Elmer's court victory: the long arm of Swiss secrecy law gets shorter - Tax Justice Network

2. As a **journalist** I am at risk of being threatened during my investigation

By carrying out your investigation, you will be “*making waves*.” Asking intrusive questions, meeting witnesses, requesting reports from the competent authorities, contacting the opposing party for their opposing statement. Doing your job as a journalist goes against those who act with impunity, who may even put pressure or use threats to ensure that the results of an investigation are not made public. Once published or broadcast, journalists are still not immune to legal proceedings. The whistleblower, anonymous or not, may also be directly exposed.

I turn to my publisher

Journalists are not the only ones who are committed to protecting sources and whistleblowers. The role of the editorial team is essential. The ability to protect and be protected, protect yourself from SLAPP suits, but also to carry out work under good conditions, is for many, dependant on the media outlet. Media affiliation, the size of the editorial team and the way the company operates are all key elements.

Turning to your editor is the first thing to do in the event of threats or legal proceedings. Whether you are an employee or a freelance writer, the editorial team plays its part in approving the publication or distribution of an article or news coverage. The criminal liability regime established by the law of July 29, 1881, known as “*cascading liability*”, **provides that the first persons to be held liable in the event of a press offence are not the authors, but the director of the publication or the editor to the extent to which they make the decision of whether or not to publish the article that is the cause of the offence.** According to the law of 29 July 1881 relating to the written press and the law of 29 July 1982 on audiovisual communication and the internet, the publication director, journalist, and potentially the media outlet, will also be identified civilly liable.

Providing legal and financial support to their journalists is essential for media corporations.

- In large newsrooms, lawsuits can be handled by the legal department, leaving the editors to continue their work.
- Independent media outlets do not necessarily have the legal capabilities to deal with multiple attacks and attacks made at different stages in the reporting process. The lack of a legal department may mean journalists take fewer risks, if any at all.

Dealing with SLAPP suits can be energy-consuming, costly, and does not allow organisations to recover any incurred costs. At this stage, it is not possible to take legal action against companies for abusive procedures.

The editorial staff may also decide to publicise the details of threats or legal action taken against their journalist. A well-oiled machine has been set up in some media outlets, where journalists have been taken into police custody. Appeals to their lawyer, close entourage, implementation of a communication strategy (press release, sharing information on social networks), industry support, emotional support from their colleagues, etc.

Join forces with other players in the sector (trade unions, editorial companies, associations defending a profession) to create a media buzz about a summons or complaint helps to mobilise public opinion (the “*Streisand effect*”; trying to silence people reinforces the desire to speak out). Defending the freedom of the press and the right to information goes well beyond the profession. By alerting the public, drawing on the expertise of NGOs, academics, and professionals, our defence is more likely to be successful.

I do not overlook the psychological impacts these threats may have on my mental health

The often-underestimated psychological impact of the profession is not insignificant. Because journalists bear witness to human suffering, and because they are sometimes the direct targets of violence⁷⁶, Physical, sexual, or verbal abuse, intimidation or threats of legal action, cyberharassment, and, more broadly, harm that may impact their ability to perform their job, are all traumatic events for journalists. In some cases, it can lead to post-traumatic stress disorder. The impact on those close to you or those that are directly or indirectly involved (witnesses, sources, whistleblowers, activists, etc.) in the investigation, and the effect of the resulting feeling of responsibility is still unknown when it comes to taking into account the psychological impact on journalists.

"It's part of the job", said a journalist of cyberbullying or threats outside business hours, but it should not be life-threatening, and editors have a major role to play. Media outlets need to better understand the psychological effects at stake and provide, at the very least, support for their employees and affiliates (correspondents, freelancers, etc).

Do more

Do more. Be aware that misogyny, misinformation and political extremism can fuel online attacks. Racism, religious discrimination, homophobia, transphobia, and other forms of discrimination are also damaging.

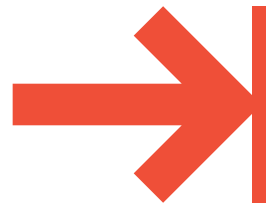
We would recommend implementing emergency measures to ensure that a journalist's social media is taken over and managed by an experienced community manager if required. This puts some distance between the journalist and the online hatred, at least in the short term. Similar measures could also be put in place for freelancers, especially those who fall victim to cyberbullying following the publication of a story.

⁷⁶ River Smith, Elana Newman, Susan Drevo, Autumn Slaughter Covering Trauma: Impact on Journalists, DART Center for journalism & trauma, July 2015



#10

GOLDEN RULES



FOR
WORKING
WITH A
WHISTLEBLOWER

- #01** Be familiar with laws that regulate the whistleblower status and the variations in place in France, Belgium and Switzerland.
- #02** Understand and assess the risks whistleblowers expose themselves to by agreeing to share their story.
- #03** Use secure communication channels for all contact.
- #04** Refer whistleblowers to the competent authorities or associations (and in particular, the Maison des Lanceurs d'Alerte for any alerts involving French law).
- #05** Comply with public disclosure deadlines as provided for by the Wasserman Law in France (i.e. 6 months and one week after contacting the competent authorities, if no action has been taken to remedy the situation).
- #06** Clarify the whistleblower's expectations, explain how you operate and comply with the terms of the contract.
- #07** Preserve the whistleblower's anonymous status at all costs if requested.
- #08** Regularly update the whistleblower on the progress of the investigation
- #09** Ask the whistleblower to read the article or watch/listen to the report prior to its publication or broadcast, to ensure they give their consent.
- #10** Do not overlook the impact such a process can have on the whistleblower's mental health, but also on your own. Seeking guidance can often be beneficial.



Annexes

①

Activity sectors covered
by the 2019 European
Directive

②

Who does the 2019
European Directive
apply to?

③

Trade
secrets in
France

④

The competent
external authorities
in France

⑤

Non-decree
regulatory authorities
in France

ANNEX 1

Activity sectors covered by the 2019 European Directive

Protection can now be extended to persons reporting violations of EU law in **key sectors**. Different sectors are listed under Article 2 of the Directive⁷⁷:

- Public procurement;
- Financial services, products and markets, and prevention of money laundering and terrorist financing;
- Product safety and compliance;
- Transport safety;
- Protection of the environment;
- Radiation protection and nuclear safety;
- Food and feed safety, animal health and welfare;
- Public health;
- Consumer protection;
- Protection of privacy and personal data, and security of network and information systems;
- Financial interests of the Union;
- Internal market of the Union, competition and state aid, rules on corporate tax.

⁷⁷ See Article 2 of the Directive "Material scope".

ANNEX 2

Who does the 2019 European Directive apply to?

The Directive extends to persons working in the **private and public sectors** who have acquired information on breaches in a

According to Article 4 of the Directive ⁷⁸, it may include:

- Persons having the status of worker within the meaning of Article 45(§1) TFEU, including civil servants;
- Persons having self-employed status within the meaning of Article 49 TFEU;
- Shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees;
- Any persons working under the supervision and direction of contractors, subcontractors and suppliers.

The Directive shall also apply to reporting persons on breaches acquired in a work-based relationship which has ended since the disclosure of the information, or a work-based relationship that is yet to begin (where information on breaches has been acquired during the recruitment process).

The measures for protection also apply to:

- Facilitators: the facilitator is “a natural person who assists a reporting person in the reporting process in a work-related context, and whose assistance should be confidential⁷⁹.”
- Third persons who are connected with the reporting persons and may suffer reprisals in a work-related context (colleagues, relatives...);
- The legal entities that the reporting person owns or works for.

LEGAL PROTECTION

According to Article 6 of the same Directive, in order to qualify for legal protection ⁸⁰, the whistleblowers must fulfil **2 conditions**:

- on the one hand, they must have **reasonable grounds** to believe that the reported information fell under the scope of the Directive and was true at the time of reporting ⁸¹
- on the other hand, they must report the misconduct to the **competent authorities** using the internal and external reporting channels provided.

Therefore, and in compliance with the conditions outlined in the Directive, the whistleblower **is protected against all forms of reprisal** (dismissal, intimidation, demotion, etc.).

They may benefit from **measures of support** such as information, independent advice, or legal aid, and have access to interim measures and immunity from liability for breach of non-disclosure clauses in their contracts.

⁷⁸ See Article 4 of the Directive “Personal scope”.

⁷⁹ Article 5, 8: the facilitator is “a natural person who assists a reporting person in the reporting process in a work-related context, and whose assistance should be confidential.”.

⁸⁰ See Article 6, “Conditions for protection of reporting persons”.

⁸¹ In accordance with the case law of the ECHR, notably in the Heinisch v. Germany judgment of 21 July 2011, which is also apparent from French case law (Cass. soc. of 30 June 2016, no. 1309).

ANNEX 3

Trade secrets in France

Some sectors that are protected by trade secrets do not provide whistleblower protection. Even when all the legal conditions to obtain whistleblower status are met, you must ensure that the disclosed information does not fall within the scope of a legally protected secret.

- Under the unamended law of 9 December 2016 (the Sapin law 2), the secrets excluded from the whistleblower regime included: national defence secrets, medical secrets and discussions covered by lawyer-client privilege;
- The Wasserman law added the secrecy of judicial proceedings, the secrecy of the investigation and the professional secrecy of lawyers.

1. The secret of national defence

It is a protection granted to all processes, objects, documents, information, data and computer networks linked to national defence and which have been subject to classification measures designed to restrict their distribution and access.

If the report infringes one of these classification measures, whistleblower protection does not apply, and they risk a prison sentence between 3 to 7 years (articles 413-9 to 413-10 of the Penal Code). There are no exceptions.

2. Medical secrecy

Medical information is information relating to patients and their care. They are protected by the secrecy act (Articles 226-13 and 226-14 of the Penal Code) and cannot be included in a report that benefits from whistleblower protection.

However, there are two exceptions to the protection of medical secrecy that allow whistleblower status:

- if the protected information poses a serious risk to public health or the environment.
- if the healthcare professional is aware of any misconduct or sexual abuse of a minor, they have an obligation to initiate the alert.

3. The secrecy of judicial proceeding

Proceedings at a judicial hearing are secret until deliberated by the judge. Any breach of this secrecy prevents the person from being protected by whistleblower status and may result in a fine and one-year sentence (article 226-13 of the Penal Code). No exceptions are provided for by law.

4. The secrecy of the investigation or judicial enquiry

In keeping with the secrecy of legal proceedings, the investigation and enquiries are secret. It is not possible to reveal any information related to an investigation, as procedures must remain secret.

However, individuals under investigation, witnesses, civil parties and journalists in some cases are not subject to this secrecy, although they cannot be granted whistleblower status.

5. The professional secrecy of lawyers

Lawyers are subject to secrecy in relation to their client's information, or information that may have been transmitted to them by a colleague. The lawyer is also responsible for this secrecy if they have collaborated with a person who has access to this information, such as a trainee. They cannot therefore benefit from the whistleblower status.

Trade secrecy: a secret that does not hinder whistleblower status

Trade secrecy is a legal concept that protects the elements within the scope of protection of Article L151-1 of the Commercial Code. Nevertheless, Article L151-8 of the French Commercial Code provides for an exception to this secrecy, which also provides whistleblower status protection.

Under this article, trade secrecy must not be invoked against a person who discloses facts in the following cases:

1. To exercise their right to freedom of expression and communication, including the respect for the freedom of the press, and freedom of information as proclaimed in the Charter of Fundamental Rights of the European Union;
2. To disclose, for the purpose of protecting the general interest and in good faith, illegal activity, misconduct or wrongdoing, including in the exercise of the right of alert defined in article 6 of Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life under the conditions laid down in articles 6 and 8 of the same law;
3. For the protection of a legitimate interest recognised by European Union law or national law.

At European Union level, a law was adopted in 2016 to better protect companies' strategic information. Under the guise of giving European firms the legal tools needed to protect themselves against industrial looting, patent theft, unfair competition, and counterfeiting, this "trade secrets" directive has underlined a dangerous breach in the protection of freedom to inform and poses a serious threat to the fundamental right to information.

However, whistleblowers' business secrecy can now be waived under Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 aimed at protecting journalists and human rights defenders against unjust legal procedures known as "SLAPP suits". A breach of trade secrecy should therefore be classified as a SLAPP suit.

ANNEX 4

The competent external authorities in France

In principle, contacting the external authorities is necessary before going public. The Wasserman law and its implementing decree will inform you on which authority would be the most relevant to contact.

There are 4 categories of competent authorities in France (see Article 8, II. of the amended Sapin II Act):

I. The authority which appears to be the most competent amongst those designated by the decree

(see list below):

- These authorities have an array of specialities. They may be an administrative authority, an independent public authority, an independent administrative authority, a professional order, or a legal entity entrusted with a public service mission to collect and process reports within its jurisdiction.
- **Some authorities, such as DDD (French Defender of Rights), DGFIP (French Directorate-General of public finance) or DGCCRF (Directorate-General for Competition, Consumer Affairs and Prevention of Fraud), have several specialities.**

II. Defender of Rights:

They can redirect you to the authority(ies) best suited to process your report and protect the whistleblower.

II. Judicial authority

Referral to the Public Prosecutor.

IV. A competent institution, body or agency of the European Union

- That can collect information on breaches that fall within the scope of Directive (EU) 2019/1937.
- **The Defender of Rights (DDD) is the external “benchmark” authority. It has an enhanced protection role. It is advisable to always refer to this authority, independently of additional referrals with other authorities.**

82 See the Appendix to Decree no. 2022-1284 of 3 October 2022 on procedures for collecting and processing whistleblower alerts and setting the list of external authorities established under Law no. 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers..

LIST OF COMPETENT EXTERNAL AUTHORITIES BY AREA OF EXPERTISE ⁸².

1. Public procurement:

- **French Anti-Corruption Agency** (AFA), for infringements of integrity;
- **Direction générale de la concurrence, de la consommation et de la répression des fraudes** (Directorate-General for Competition, Consumer Affairs and the Punishment of Fraud), for anti-competitive practices;
- **Competition authority**, for anti-competitive practises.

2. Financial services, products and markets, and prevention of money laundering and terrorist financing:

- **French Financial Markets Authority** (AMF), for investment services and market infrastructure service providers;
- **French Prudential Supervision and Resolution Authority** (ACPR), for credit and insurance organisations.

3. Product safety and compliance:

- **Direction générale de la concurrence, de la consommation et de la répression des fraudes** (Directorate-General for Competition, Consumer Affairs and the Punishment of Fraud);
- **Service central des armes et explosifs** (Central Service of Arms and Explosives).)

4. Transport safety:

- Directorate General for Civil Aviation (DGAC), for the safety of air transport;
- French Land Transportation Accident Investigation Bureau (BEA-TT), for ground Transportation Safety (Road and Rail);
- Directorate-General for Maritime Affairs, Fisheries and Aquaculture (DGAMPA), for the safety of maritime transport.

5. Protection of the environment:

- **French General Inspectorate of the Environment and Sustainable Development** (IGEDD)

6. Radiation protection and nuclear safety:

- **Authority for Nuclear Safety** (ASN)

7. Food Safety

- **General Council of Food, Agriculture and Rural areas** (CGAAER)
- **French Agency for Food, Environmental and Occupational Health and Safety** (ANSES)
lanceurdalerte@anses.fr

8. Public health:

- **French Agency for Food, Environmental and Occupational Health and Safety** (ANSES)
lanceurdalerte@anses.fr
- **French National Public Health Agency** (Santé publique France, SPF)
lanceur.alerte@ansm.sante.fr
- **French High Health Authority** (HAS)
- **French Biomedicine Agency**
- **French blood organisation** (EFS);
Efs.lanceuralerte@efs.sante.fr
- **Nuclear Test victims Compensation Committee** (CIVEN)
signalement@civen.fr; 01 42 75 72 52
- **French General Inspectorate of Social Affairs** (IGAS)
- **National Institute of Health and Medical Research** (INSERM)
- **National Council of the College of Physicians**, for practising physicians
lanceur.alerte@ordre.medecin.fr;
01 53 89 33 30
- National Council of the Order of Massage Therapists, for practising physiotherapist and massage therapists;
- National Council of the Order of Midwives, for practising midwives;
- National Council of the Order of Pharmacists, for practising pharmacists;
- National Council of the Order of Nursing, for practising nurses;
- National Council of the Order of Surgeon-Dentists, for practising dentists;
- National Council of the Order of Podiatrists, for practising podiatrists;
- National Council of the Order of Veterinarians, for practising veterinarians;

9. Consumer protection:

- Direction générale de la concurrence, de la consommation et de la répression des fraudes (Directorate-General for Competition, Consumer Affairs and the Punishment of Fraud).

10. Protection of privacy and personal data, and security of network and information systems:

- Commission nationale de l'informatique et des libertés (National Commission on Informatics and Liberty)(CNIL);
- Agence nationale de la sécurité des systèmes d'information (French National Agency for the Security of Information Systems)(ANSSI).

11. Breaches affecting the financial interests of the European Union:

- **French Anti-Corruption Agency** (AFA), for infringements of integrity;
- Directorate-General for Public Finance (DG-FIP), for value added tax fraud;
- **Directorate-General of Customs and Indirect taxes** (DGDDI), for fraud in customs duties, anti-dumping duties and similar duties
lanceur-alerte-dgddi@douane.finances.gouv.fr

12. Internal Market violations:

- **Direction générale de la concurrence, de la consommation et de la répression des fraudes** (Directorate-General for Competition, Consumer Affairs and the Punishment of Fraud), for anti-competitive practices;
- **Competition authority**, for anti-competitive practices and state aid;
- Directorate-General for Public Finance (DG-FIP), for corporation tax fraud.

13. Activities conducted by the Ministry of Defence:

- **General Control of the Armed Forces** (CGA)
cga-iga.alerte.fct@intradef.gouv.fr
- College of General Inspectors of the Armed Forces.

14. Public Statistics:

- **Public Statistics Authority** (ASP)
asp-signalement-lanceurs-d-alerte@autorite-statistique-publique.fr

15. Agriculture :

- **General Council of Food, Agriculture and Rural areas** (CGAAER)

16. National and Higher education

- **Ombudsman for National Education and Higher Education**

17. Individual and collective labour relations, working conditions:

- Directorate General for Labour (DGT).

18. Employment and vocational training:

- General Delegation for Employment and Vocational Training (DGFP).

19. Culture :

- National Council of the Order of Architects, for practising Architects;
- Council of auction houses, for public auctions.

20. Rights and Freedoms in relation to State administrations, local authorities, public institutions and organisations engaged in the public service remit:

- **Defender of Rights**

21. Best interests and rights of children

- **Defender of Rights**

22. Discrimination:

- **Defender of Rights**

23. Ethics of individuals engaged in safety activities:

- **Defender of Rights**

ANNEX 5

Non-decree regulatory authorities in France

The list of decree authorities is exclusive. An authority must be selected from the list, so that the “External Reporting” step is considered complete.

The question of the relevance of this then arises. Other authorities, that may seem competent to put an end to a situation, are not included. This can be a source of confusion, especially given that some “non-decree” authorities have approval systems for receiving reports.

This is the case for the **Regulatory Authority for Audiovisual and Digital Communication (ARCOM)**⁸³.

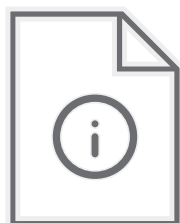
PLEASE NOTE

The guarantees provided for in the decree (confidentiality, return of information, etc.) do not apply to the authorities not listed in the Annex – it is important to remain vigilant if a non-decree authority is contacted.

IN PRACTISE:

Contacting such an authority is possible, and even recommended, if it would effectively put an end to the misconduct. But, at the very least, the defender of rights must **always** be contacted for guidance, in order to remain within the framework of the Sapin II and Wasserman laws.

⁸³ ARCOM, “Alert-us” www.arcom.fr/alertez-nous



Practical guides

①

Procedures for referral
of competent authorities
in France

②

Procedures for
contacting the French
Defender of Rights

③

Procedure for
contacting the CNIL
in France

④

Procedure for contacting
the ANSSI in France

⑤

Defamation
in France

⑥

Rights in police
custody in France

PRACTICAL GUIDE 1

Procedures for referral of competent authorities in France

The Wasserman law specified the procedures for receiving reports by the competent external authorities, and the guarantees offered to the whistleblower.

Written or oral, or physical meeting

- Ability to share all material, regardless of type or format, that corroborates the report.

Processing times and feedback

- Report Acknowledgement: 7 business days from receipt, unless exception;
- The reporting person must be informed in writing of the measures taken or planned to be taken by the receiver to resolve the reported issue. A 3-month deadline from the time of receipt is considered acceptable, or 6 months in the event of extenuating circumstances or complications;
- Written confirmation sent to the reporting person, informing them of the final outcome and implementations;
- Information on case closure reasons for this decision

Duty to process the report

- Duty to implement means to remedy the issues outlined in the report.

Confidentiality guarantee

- Information integrity and confidentiality, confidentiality of the reporting author, persons concerned and any third parties mentioned in the report;
- Elements that may identify the whistleblower cannot be disclosed without prior consent. They may, however, be transmitted to the judicial authority in accordance with article 9 of the Law of 9 December 2016;
- PLEASE NOTE: When journalists must share the facts of their report with the legal authorities, elements that may identify the whistleblower may also be shared with the authorities.

If there is no response

Contact the authority again and inform the Human Rights Defender that your complaint has not been processed.

It is advisable to always preserve:

- The proof and content of your report to the authority;
- The acknowledgement of receipt of your request;
- Any exchanges with the authority.

Referral to an external authority is a condition for obtaining whistleblower status. It is therefore necessary to be able to prove that a referral has been made, and on what date.

PRACTICAL GUIDE 2

Procedures for contacting the French Defender of Rights



The Defender of Rights (DDD) is the external “benchmark” authority. It has an enhanced protection role. It is advisable to always refer to this authority, independently of additional referrals with other authorities.

Report to the Defender of Rights for report processing

The Defender of Rights has a separate independent procedure for receiving reports. Contact can be made by various methods:

- **Via an online form**

https://formulaire.defenseurdesdroits.fr/formulaire_saisine

- **By freepost**

If you contact the Defender of Rights by post, please use two envelopes.

Place the information relating to your report in one envelope marked «*REPORTING AN ALERT*»

Insert this envelope into a second envelope marked with the following address:

Défenseur des droits
Libre réponse 71120
75342 Paris Cedex 07

This will ensure that only authorised individuals have access to the confidential information related to your alert. In order to ensure confidentiality in your exchanges, all subsequent letters to the Defender of Rights must be sent using the same two-envelope procedure.

- **By telephone at +33 (0)9 69 39 00 00** from Monday to Friday from 8.30 a.m. until 7 p.m. (local rates apply).

An acknowledgement of receipt will be provided to the sender along with an identification number which will then be used during future correspondence with the Defender of Rights..

Next steps:

- Feedback and confidentiality assurance
- Referral to the competent authority(ies) to put an end to the misconduct
- Advice on the steps to be taken in order to not lose protection benefits

PRACTICAL GUIDE 3

Procedure for contacting the CNIL in France

How do report misconduct?

The CNIL requires you to indicate your status as a whistleblower by contacting them:

- By post: 3 place de Fontenoy, TSA 80715, 75334 PARIS CEDEX 07
- Online using the remote service
- By telephone: at 33 (0)1 53 73 22 22. Calls are not recorded

Next steps

- The procedure implemented by the CNIL guarantees the integrity and confidentiality of the information gathered for a whistleblowing report. In particular, it guarantees whistleblower anonymity.
- As part of its procedure, the CNIL may contact you to request further information it deems necessary to assess the accuracy of the report. The CNIL may provide you with confidential advice.
- The CNIL can take various action when a whistleblower sends a report to the CNIL: it can, for example, **carry out inspections** or even **issue sanctions** if it considers them necessary.

PRACTICAL GUIDE 4

Procedure for contacting the ANSSI in France

How do I report misconduct?

Reports are made in writing using a 2-envelope procedure:

- The inner envelope MUST EXCLUSIVELY contain the following:

NOTIFICATION OF AN ALERT UNDER THE LAW OF 9 DECEMBER 2016

MADE ON (date sent)

- The outer envelope will contain the postal address

Following these guidelines ensures the confidentiality of your information is maintained.

- By e-mail: lanceurdalerte@ssi.gouv.fr,
Use an encrypted service where possible, such as a Zed! Container or PGP
- By telephone at +33 (0)1 71 75 84 68.

An acknowledgement of receipt will be provided to the sender along with an identification number which will then be used during future correspondence.

Next steps

- If the report does not comply with the conditions outlined in Article 6 of the Law of 9 December 2016, no further action will be taken. The reporting person will be informed.
- If the report is anonymous, ANSSI reserves the right to mark it as closed if it is unable to verify the accuracy of the information provided.
- As part of the processing of a report, ANSSI may ask the whistleblower for further information if they deem this necessary to assess the accuracy of the report.

- ANSSI may take the following action upon receiving a whistleblower's report:

- Inform another competent authority and share all the elements. For example, a report on a breach of consumer law will be transmitted to the DGCCRF, a report on the protection of personal data will be transmitted to the CNIL, etc.
- Contact the person responsible for the misconduct and request that a solution be found, according to the authority granted under the terms of the breach: **inspection, giving notice**, etc.
- Close the report if it is no longer relevant, or when the allegations are inaccurate, unfounded, manifestly minor, or contain no significant new information compared to a previously closed report.

- The ANSSI shall contact the whistleblower in writing (within a reasonable period of not more than three months from the date of receipt of the report, or in the absence of an acknowledgement, three months from the expiry of a period of seven working days following the report) with information on the measures envisaged or taken to assess the accuracy of the allegations and, where appropriate, to remedy the subject of the report, as well as the reasons thereof. This period shall be extended to six months if particular circumstances of the case, such as those related to its nature or complexity, require further attention. In this case the authority justifies these circumstances with the reporting person before the expiry of the three-month period mentioned above.
- The ANSSI will contact the reporting person in writing, to inform them of the final result of the due diligence.

PRACTICAL GUIDE 5

Defamation in France

Under French law, the law of 29 July 1881 on the freedom of the press provides a framework for this offence.

Article 29 of the 1881 law

*"Any **allegation or imputation of a fact that is prejudicial to the honour or reputation of the person or body to whom the fact is attributed is defamation. The direct publication or reproduction of this allegation or imputation is punishable, even if it is made in dubious form or if it refers to a person or body not expressly named but whose identification is made possible by the terms used in the incriminating speeches, shouts, threats, written or printed matter, placards or posters**"*

Defamation is punishable by a fine of EUR 12 000.

Possible defence against defamation: **You can defend yourself by pleading immunity, good faith, or the truth of the alleged facts.**

- **Article 35 of the 1881 law:** *The Truth of the defamatory fact*

The truth is hard to prove. Evidence of the truthful nature of the facts must be complete, and linked to defamatory allegations in their full scope, in order to be acquitted by the criminal court.

- **Article 35 bis :** *The good faith of the defamer*

The law establishes a presumption of bad faith but you can prove your innocence.

How do you prove the truth or good faith?

*"The defendant may produce, for the purposes of their defence, without such production giving rise to proceedings for handling stolen goods, evidence arising from a **breach of the secrecy of the investigation or enquiry or any other trade secret** if it is of such a nature as to establish their good faith or the truth of the defamatory facts ⁸⁴."*

- **The law allows you to violate the secrecy of the investigation or enquiry, or any other trade secret.**

In practise: What does the case law say? How is this applied in practice?

Good faith implies a combination of the following 4 criteria:

- Presence of a **legitimate purpose**: for example, to report a health scandal
- **Severity of the investigation** (different from the truth of the words). The reporting person's accusations, whether they are a journalist or not, must be based on solid facts, even if they are ultimately mistaken. They must prove that they did not make these accusations randomly or deliberately lied
- **Prudence and restraint** in expression, without exaggeration in the scope of the report
- **No personal conflict/animosity** with the entity targeted by the publication

For example : In a recent ruling, the case law clarified the relationship between these 4 criteria when the defendant argued that they were acting in good faith and confirmed their status as a whistleblower. In this situation, the Court of Cassation stated that:

- 1) First, determine whether the disputed comments are part of a **public-interest debate** and whether they have **sufficient factual basis/serious investigation**
- 2) **Second, when these two conditions are met, assess less strictly whether the author of the remarks was careful and measured in their delivery and was devoid of personal animosity.**

It should therefore be remembered that inclusion in a general interest debate and the seriousness of the investigation is overriding grounds for defending an action against defamation.

⁸⁴ Article 35 of the Law of 29 July 1881, paragraph 6.

PRACTICAL GUIDE 6

Rights in police custody in France

Please note: Law No. 2024-364 of 22 April 2024, which came into force on 1 July 2024, strengthens the rights of persons in police custody.

PLEASE NOTE: The Freedom of the Press Act of 29 July 1881 makes no specific provision concerning journalists in police custody. General law applies.

I. What is police custody?

- It is a means of **coercion and deprivation of liberty**, decided by a judicial police officer.
- It takes place in a cell of a **police station** and is divided into interrogation sessions, "hearings" and witness "confrontations"; and "rest periods". It means that the accused is kept on site, to be available for the investigators.
- The statements made during each hearing or confrontation are recorded in an official report (statement).
- You may get a **pat-down** or **searched if deemed necessary for the investigation**. This will be carried out in a separate room, by a person of the same sex.
- **Procedures that occur in police custody must be carried out with respect for your dignity.** You must have access to water and hot meals.

II. What are the grounds for placing you in police custody?

- You may only be held in police custody if there are **reasonable grounds to suspect that you have committed or attempted to commit a crime or offence punishable by imprisonment**.
- Police custody is only justified if it is the only way to achieve one of the following 6 objectives (Article 62-2 of the French code of criminal procedure):
 - 1 Facilitating investigations that require your presence or participation;
 - 2 Guaranteeing your attendance before the Public Prosecutor so that the latter can decide how to proceed with the investigation;
 - 3 Preventing you from altering evidence or material proof;
 - 4 Preventing you from pressuring witnesses or victims and their families or relatives;

5 Preventing you from colluding with other persons who may be your co-perpetrators or accomplices;

6 Ensuring the implementation of measures to put an end to the crime or offence.

III. Notification of your rights

- Notification of police custody is information received from the law enforcement officers, in a language you understand, of your rights as a detainee.
- Notification of police custody must be made **immediately** upon your arrival at the police station, and within a maximum of approximately 30 minutes.
- You should be immediately notified of:
 - The nature of the offence you are charged with, alleged description, date and location
 - Reasons for your placement in police custody
 - The expected duration of police custody and any possible extensions;
- You must be notified of your rights, namely
 - Your **right to be assisted by a lawyer, from the start of police custody, and at any time during police custody**;

The law of 22 April 2022 abolished the 2-hour waiting period. No hearing may commence without the presence of a lawyer (Article 63-4-3 of the CPC).

PLEASE NOTE: in exceptional circumstances, the Public Prosecutor may authorise an immediate hearing without the presence of a lawyer, if it is essential for compelling reasons related to the particular circumstances of the investigation (such as to ensure urgent investigations to be carried out to gather or preserve evidence or to prevent serious and imminent harm to the life, liberty or physical integrity of a person).

- If your lawyer arrives during a hearing, the hearing must be interrupted at your request so that you can speak with your lawyer.

- **Your right to notify a relative, or any person you designate ⁸⁵, and/or your employer**, and if you are a foreign national, the consular authorities;
- Your **right to be examined by a doctor**. In the event of an **extension of police custody, your right to be re-examined**. The doctor will determine whether you can be placed in police custody based on your health. We advise seeking medical advice out of principle.
- Where appropriate, **the right to be assisted by an interpreter**;
- Your **right to consult the statements relating to police custody** and your eventual hearing prior to the arrival of your lawyer and medical certificate issue. This must be done as soon as possible, and at the latest before any custody extension. > your lawyer may also consult the statements of hearings and interviews (Article 63-4-1 of the CPC)
- Your **right to make statements, to answer questions and your right to remain silent** during hearings, upon confirming your identity
 - Tip: Exercise your right to remain silent while waiting for your lawyer.
 - Please note: The officer must fulfil your request to call your family/employer/doctor within 3 hours. However, this time-limit is not always respected.

IV. How long can custody last?

- It starts when you are first brought in for questioning. This means the moment when you are first apprehended by the police and therefore subjected to coercion.

TIP: Take note of the time you are first deprived of freedom and apprehended. Check the police custody start time as indicated on the statement. If it doesn't match what actually happened, say something, do not sign anything, and inform your lawyer. It could be used in court to invalidate the custody order.

There must be as little time as possible between first apprehension and subsequent questioning.

- Custody duration: Defined by article 63 of the French code of criminal procedure:

IN PRINCIPLE - **Initial custody duration is 24 hours**. This can be shortened or extended

FIRST EXTENSION to the 24 hours (totalling 48 hours of custody) - custody may be **renewed** for 24 hours by written and reasoned authorisation of the Public Prosecutor, if the following 2 conditions are met

1° The offence you are suspected of having committed or attempted to commit is a crime or an offence punishable by a prison sentence totalling 1 year or more;

2° An extension is the only way to achieve one of the aforementioned objectives justifying the custody or to organise your transport to the courthouse, if no holding cells were available.

Conseil : after 24 hours, in the event of an extension, the Public Prosecutor may ask you to attend a hearing. You may then prepare an arguing statement with your lawyer, to have the custody order lifted.

SECOND EXTENSION de 24H : to the 24 hours: **for serious offences** (narcotics, terrorism). The decision to extend is then made by the investigating judge or the magistrate for custody and release.

V. The end of police custody

- At the end of the police custody, the Public Prosecutor or the investigating judge decides whether you should be released or appear in court.
- If you are transferred directly from the police station to the court, it is a **referral**. In this case, you must appear before the Public Prosecutor or the judge **on the same day the custody was ended**.

Exceptionally, if you are unable to appear on the same day, you must do so within a maximum of 20 hours after the end of the police custody. Meanwhile, you are held in a court cell.

⁸⁵ Article 63-2 of the Code of Criminal Procedure, since the aforementioned Law of 22 April 2024



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