

Towards a common European legal framework for the protection of whistleblowers

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Proposed EU Directive

- Directive proposed as part of package of whistleblower (“WB”) protection measures adopted by European Commission on 23 April 2018
- Proposal must be adopted by both European Parliament and the Council to become effective

Sets EU-wide standards

- Protections currently fragmented
- Only 10 of 28 Member States have comprehensive WB protection laws
- In 2013, Transparency International rated only 4 EU countries as having acceptable WB protections
- In an EU survey, 81% of Europeans indicated that they did not report corruption that they experienced or witnessed (2017 Special Eurobarometer on corruption)

Who is protected?

- A “reporting person working in the private or public sector who acquired information on breaches [of EU law] in a work-related context” (Art. 2)
- Includes not only employees but also self-employed, freelancers, consultants, contractors, suppliers, volunteers, unpaid trainees, job applicants

Applies to reports on a range of EU law breaches (Art. 1)

- Public procurement
 - Financial services, money laundering & terrorist financing
 - Product & transport safety
 - Consumer & environmental protection
 - Nuclear safety
 - Food & feed safety
 - Animal health & welfare
 - Public health
 - Protection privacy, data protection, security network & information systems
 - EU competition rules
 - Corporate tax rules
 - Damage to the EU's financial interests
- *Encourages Member States to expand this list using same principles

Protections against retaliation

- Apply if WB had reasonable grounds to believe that information was true at time of reporting
- Member States must prohibit and sanction retaliation (Arts. 14-15)
- WBs must have access to free advice and adequate remedies if suffer retaliation
- Reversed burden of proof:
Person/company accused of retaliation must prove that action justified and not retaliatory (Art. 15(5))

Internal reporting procedures

Applies to (Art. 4):

- Private companies
 - >50 employees, or
 - >EUR100M annual turnover, or
 - operating in financial services, or
 - vulnerable to money laundering or terrorist financing
- National & regional administrations
- Local municipalities of >10,000 inhabitants

Internal reporting channels & procedures (cont'd)

- Must implement clear internal reporting channels that ensure confidentiality (Art. 5(1)(a))
- Must designate a person or department responsible for receiving and following up on reports within max 3 months (Art. 5(1)(b)-(d))
- Provide clear and easily accessible information about the procedures and conditions for making an external report to national or EU authorities

Should report internally first

But can go to competent external authority if (Art. 13(2)):

- Report internally but no action taken
- Internal channels not available
- Internal reporting non-mandatory (e.g., non-employee)
- Reasonable belief that internal channels would not work or would jeopardize investigation

National Authorities

- EU Member States must designate competent national authority to handle external reports
- Must design user-friendly reporting channels separate from normal complaints system that ensure confidentiality
- Must make understandable information available to public about how to report

Penalties for false reporting

- Art. 17(2)
- Member States must provide penalties for “making malicious or abusive reports or disclosures”
- Must provide compensation for damage suffered by target of false report

Criticisms & Concerns

- Internal reporting mandated (Art. 13)
- No requirement for companies to self-report potential crimes reported internally
- Insufficient confidentiality protections for WBs
- No protections for EU citizens blowing the whistle to non-EU authorities (e.g., SEC, INTERPOL)
- Fails to specify damages, compensation or other relief available to WBs
- No rewards for reporting
- Penalties/compensation for “malicious or abusive” reports give companies avenue for harassing WBs (Art. 17(2))

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