

Guest Editorial eucrim 3/2018



Tiina Astola

Editorial

ABSTRACT

Many recent scandals, such as Dieselgate, Luxleaks, the Panama Papers, and Cambridge Analytica, might never have come to light if “insiders” had not had the courage to speak up about wrongdoing occurring in their workplaces. These are only a few examples of how whistleblowers help detect, investigate, and remedy violations of law that can seriously damage the public interest and the welfare of our citizens and societies. Those who help uncover illegal activities should not have to suffer any personal or professional disadvantages or even be punished because of their actions. With its proposal of 23 April 2018 for a “Directive on the protection of persons reporting on breaches of Union law”, the Commission sets out a much needed legal framework for robust protection of whistleblowers across the EU.

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Dear Readers,

Many recent scandals, such as Dieselgate, Luxleaks, the Panama Papers, and Cambridge Analytica, might never have come to light if “insiders” had not had the courage to speak up about wrongdoing occurring in their workplaces. These are only a few examples of how whistleblowers help detect, investigate, and remedy violations of law that can seriously damage the public interest and the welfare of our citizens and societies.

Those who help uncover illegal activities should not have to suffer any personal or professional disadvantages or even be punished because of their actions. However, reality has repeatedly shown that whistleblowers take high personal risks with their jobs, their reputations, or even their health. They often end up paying a high price: many are fired, demoted, harassed, sued, or blacklisted. Without sufficient legal protection against retaliation and reliable avenues to report wrongdoing, it is only natural that potential whistleblowers are reluctant to come forward with their concerns.

Data from surveys and studies document this reluctance. The 2017 Special Eurobarometer on corruption, for instance, indicated that 81% of Europeans did not report corruption they had experienced or witnessed. Similar results were revealed in the Commission’s 2017 public consultation on whistleblower protection, where 85 % of respondents said they believed that workers very rarely or rarely report concerns over threats and harm to the public because they fear legal and financial consequences. Last but not least, the 2017 study by Milieu Ltd, which was commissioned by the European Commission, estimated the loss of potential benefits due to a lack of whistleblower protection in the area of public procurement to be in the range of €5.8 to €9.6 billion each year for the EU as a whole.

A major factor contributing to this situation of underreporting is currently the high level of fragmentation across the EU as regards whistleblower protection. This consistently led EU institutions, civil society organisations, and trade unions to call for EU-wide legislation on the protection of whistleblowers in the EU in both the public and private sectors.

With its proposal of 23 April 2018 for a “Directive on the protection of persons reporting on breaches of Union law” (COM(2018) 218 final), the Commission sets out a much needed legal framework for robust protection of whistleblowers across the EU. The proposed, common, minimum standards strike a balance between the need to protect whistleblowers and the need to discourage the reporting of malicious information and prevent unjustified reputational damage. At the same time, these new standards help safeguard the public’s right to access information and to media freedom by protecting those who act as sources for investigative journalists should their identity be revealed.

Once adopted, the proposed rules are bound to make a difference in workplace culture: both public servants and private sector employees will have clear and easily accessible channels for reporting. They should feel reassured that it is safe and acceptable for them to speak up in order to protect the public interest.

Providing strong whistleblower protection will contribute to the effective detection and prevention of violations of EU law that may cause serious harm to the public interest. It will also strengthen transparency, good governance, accountability, and freedom of expression in the EU.

The Commission is currently supporting negotiations on the proposal between the two co-legislators, the European Parliament and the Council, with a view towards its adoption before the end of this legislative period. Since the proposal is still under scrutiny, it is too early to say whether and to what extent the Union’s efforts will pay off. One thing is clear: in the face of recent scandals exposing weak controls in the area of banking and financial markets, nuclear safety, and environmental protection, the Union must act!

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