
Position Paper of the Trade Council 'Central Administrations and Finances'

Position Paper on Whistleblower Protection

CESI welcomes this public consultation launched by the Commission, to follow growing calls for better protection of whistle-blowers. CESI acknowledges that the Commission has taken steps towards the goal by making public commitments on the need for such a protection and the establishment of an inter-service working group, and the decision to conduct an impact assessment. CESI is therefore eagerly awaiting the results of the public consultation and the commitments taken thus far by the Commission that will result in concrete actions hopefully by the end of 2017.

Introduction

In recent times the public has seen a range of explosive news hit the front pages, covering mass surveillance to mass scale tax evasion. The public was informed of the wrongdoing thanks to the joint work of whistle-blowers who provided the incriminating evidence and investigative journalists. Unfortunately, instead of being praised for raising the alarm, many of the high-profile whistleblowers have been subject to actions ranging from sanctions at work, all the way up to criminal proceedings.

Protecting whistle-blowers is not merely about protecting individuals, it is also about workers' rights and ensuring the provision of high-quality public services and protection against financial, environmental and consumer rights' breaches. Since the financial crisis, public services in particular, have been subject to considerable cuts to finances and human resources. This is why it is important that the staff in these bodies have the means to report such breaches when they have exhausted all available options open to them within the instances themselves. When exposing any wrongdoing, workers should not have to worry about potential legal proceedings being carried out against them, and as a result raking up very high legal bills due to cases that can span over years.

Public authorities and businesses are not exempted from the law and therefore a shift of blame in the case of publicized wrongdoings should not be encouraged. As a representative of trade unions, CESI also attaches a lot of importance to creating a workplace that nurtures an atmosphere of transparency. It should be stressed that whistle-blowers have contributed to the improvement of the quality of democracy and the trust that citizens have in their public institutions by making them accountable to the population.

In European Union member states, there is no unified or comprehensive whistle-blower protection system. Many countries do offer protection in specific cases, such as corruption. Therefore, we believe that action should be taken on the EU level to provide necessary and reliable information on this matter. Legal certainty is key when dealing with whistleblowers, and the EU should aim to strike a balance between the workers' obligation to their employers and the principle of democratic institutions when dealing with alert citizens who report cases of wrongdoing. Consequences of reporting wrongdoing should not discourage workers from doing so when it is in the public interest.

CESI therefore recommends that the following measures be taken

- Enact an EU legal framework that would set out common minimum standards for the protection of whistleblowers throughout the European Union. This should also set out a legal framework that provides legal certainty in the case of reporting wrongdoings by whistleblowers. This legal framework should guarantee that those who expose wrongdoing be protected from retaliation or prosecution;
- The scope of such an EU legal framework should not only focus on public institutions in EU member states, but also on the private sector, which should be held accountable for the well-being of citizens too. In addition, this legal framework should provide the same protection to investigative journalists so that they may continue providing enlightening and efficient reports;
- Reports must be provided to the public prosecutor's office first, or should be submitted internally by means of the channels in place in the responsible public bodies. The administrative structures already in place relating to reporting (e.g. in the case of corruption, direct and indirect taxes, VAT, customs and social security) should be expanded;
- To reach this aim, a reporting mechanism should be set up that defines the exact steps to be followed by someone wishing to report a wrongdoing. This procedure should also allow for dealing with disclosures that may be based on erroneous facts but made with good intent;
- In-depth study of best practices and regular reviews of specific cases and legislation.

CESI would like for the Commission to take into account the following principles:

- Protections include exemptions from criminal proceedings related to the protected disclosure, but should also include and imply protection from civil proceedings and disciplinary measures and other types of reprisals such as withholding of promotions; coercion and intimidation. Reprisals against colleagues and family members should also be included in that category of prohibited reprisals;
- Treating all types of business information as trade secrets means that the web is cast too wide with regards to internal business information. This not only undermines the principle of whistleblowing itself, it also undermines freedom of expression and the rights of consumers to be protected from wrongdoings. The definition of trade secrets should therefore be limited to a strict definition involving only aspects related to patents, production processes and competitiveness. Illegal or unethical acts should not be protected as trade secrets;
- The public interest must always prevail over private or corporate interests in these types of matters.