



European Confederation of Independent Trade Unions (CESI)

Position Paper on Whistleblower Protection To be adopted by TC ACF

Further information

European Confederation of Independent Trade Unions (CESI)

info@cesi.org

+32 2 228 18 60

www.cesi.org

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CESI welcomes this public consultation launched by the Commission, to follow growing calls for better protection of whistleblowers. 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](#) whistleblowers who provided the incriminating evidence and investigative journalists [working together](#). 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 whistleblowers is not merely about protecting individuals, ~~but~~ 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 then](#) important that [the staff persons within structures in these bodies should](#) have the means to report [such](#) breaches when they have exhausted all [available options open to them within the](#) instances ~~within 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 ~~expensive-high~~ legal bills due to [proceedings cases](#) that can ~~stretch out over a span of over~~ years.

Public authorities and businesses are not exempt from the law and therefore a shift of blame in the case of ~~a~~ 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 whistleblowers have contributed to the improvement of [the quality of](#) democratic quality and the trust that citizens have in their public institutions by making them accountable to ~~said citizen~~ [the population](#).

~~Looking across the European Member States~~ In European Union member states, there is ~~no unified or~~, many provide protection for certain issues ~~but do not have a~~ comprehensive whistleblower protection ~~system,~~ or in certain instances there is none. [Many countries do offer protection in specific cases, such as corruption.](#) Therefore, we believe that ~~an~~ action should be taken on the EU level to provide ~~robust-~~ [necessary and reliable](#) information [on this matter.](#) ~~and shed some light on the 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 ~~but also~~



~~to~~ and the principle of democratic institutions ~~and citizens~~ when dealing with alert citizens who report in cases of wrongdoing. Consequences of reporting wrongdoing should not ~~discourage~~ disparage workers from doing so when it is in the public interest.

CESI therefore recommends that the following measures certain actions to be taken:

- Enact an EU legal framework that would set out common minimum standards for the protection of whistle-blowers throughout the European Union. This should also set out a legal framework that provides legal certainty in the case of reporting wrongdoings by whistleblowers. A This legal framework should guarantee that those who expose wrongdoing ~~are~~ be protected from retaliation or prosecution;
- The scope of such an EU legal framework should not only focus on public institutions ~~that benefit from in~~ EU member states ~~fundings~~ b, but also on the private sector, which should ~~also~~ 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;
- ~~Ensure that said legal framework provides the same type of protection to investigative journalists as it would do to whistleblowers, which would allow in-depth investigative journalism to carry on and be efficient;~~
- To reach this aim, Allowing for the setting up of a reporting mechanism should be set up that defines that sets out the exact steps to be followed ~~step-by-step~~ what is required in case a person would like by someone wishing to report a wrongdoing. This procedure ~~sh~~ould also allow for dealing with disclosures that ~~might~~ may be based on erroneous facts but made in with good intent. ~~This could be done through proper reporting channels internally, or externally with public oversight agencies, ombudsmen, competent authorities, trade unions or employers' associations, as well as through the means of the media;~~
- In-depth ~~s~~Study of best practices and ~~conducting~~ regular reviews of specific cases and legislation.

3

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;

- ~~Not treating any~~ types of business information as ~~a~~ trade secrets, ~~risking~~ means that the web ~~is~~ be cast to wide with regards to ~~inside~~ internal business information. This not only undermines the principle of whistleblowing itself, ~~but~~ it also undermines ~~the~~ freedom of expression and the rights of consumers to be protected from wrongdoings. The definition of trade secrets should therefore be limited ~~kept~~ to a strict definition ~~that~~ involving only aspects related to patents, production processes and competitiveness. ~~es~~ keeping secrets confidential that regard their competitive edge and should not cover illicit 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.