

EFJ Position on EU whistleblower legislation

An increased amount of media coverage for whistleblowing activities over the last few years, as well as the debate on the trade secrets directive, has made policy makers across the European Union aware of the importance of whistleblower protection laws. However, very few countries already have specific whistleblowing legislation. Instead, employees and civil servants in most Member States have to examine anti-corruption, labour and criminal provisions to protect themselves against retaliation by their employer.

1. Whistleblowing is a fundamental aspect of freedom of expression

As enshrined in Article 10 of the European Convention of Human Rights, Article 11 of the Charter of Fundamental Rights of the EU and the CoE recommendation CM/Rec(2014)7, everyone has the right to freedom of expression and to receive information. These rights, which include the public's right to know, are fundamental for the functioning of a genuine democracy.

2. Whistleblowers are important sources of information for journalists

Protecting journalistic sources is a basic condition for journalistic freedom, independent and investigative journalism to fulfil its watchdog role. Whistleblowers have privileged access to sensitive information, that is why they should be able to disclose them through the most appropriate channel – internally or externally – without any order of priority.

Should external whistleblowing be necessary in certain cases - while it is recommended that internal channels of reporting do exist - whistleblowers need to rely on the confidentiality of their communications with journalists. The protection of journalistic sources is complementary to a strong protection of whistleblowers against retaliation, in order to avoid any intimidation and chilling effect.

3. The protection of whistleblowers should be harmonised throughout the EU

Only a few Member states have advanced legislations protecting whistleblowers. It is necessary that whistleblowers enjoy a standard level of protection throughout the union - as some issues know no borders - which should apply to all fields of EU competence. The normative framework should encourage and facilitate whistleblowing.

4. Companies' interests must be balanced with the interest of the public

Companies' interests can't outweigh public interest, as defined by the European Court of Human Rights. The interests of employers must be balanced with the public's right to know when their interests are at risk, likely to be threatened or when the law is being broken.

5. The need for a change of paradigm

An enabling environment should be set up in order to consider whistleblowing as an act of democratic responsibility rather than an act of disloyalty. A fund should be created in order to ensure legal advices in cases where whistleblowers are being prosecuted.