

## **Whistleblowing and protection from blacklisting**

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### **Introduction**

Whistleblowing is a fundamental aspect of freedom of expression and therefore of democracy. Yet workers who expose wrongdoing are often given weak or no protection and are often subject to retaliation. Recent cases have highlighted the need for protection for whistleblowers and have reinforced the ETUC demands for full coverage protection at EU level.

Given the cross-border and multinational character of European business life, EU legislation is needed to ensure that workers are not threatened by different treatment or protection across borders. The European Parliament has also long called on the Commission to submit a legislative proposal to establish EU whistle-blower protection. The EU Commission has recently declared some interest to include measures on whistleblowing in the Work Programme for 2017.

The key objective of this resolution is to encourage EU policy makers to put in place protection for workers who blow a whistle.

### **It is high time for European whistle-blower protection**

The ETUC attaches high importance to a timely, effective and comprehensive EU legislation to protect whistleblowers.

There is a particular EU dimension as both workers and companies are active across country borders. It is therefore essential that protection at EU-level is provided. A key concern is that the EU Commission may adopt a patchwork approach of sector by sector, country by country. Experience shows how this will create too many loopholes that will put whistle-blowers at risk. If the Commission continues to build on this path it would not be of questionable protection for workers and is unlikely to encourage workers to come forward. What is needed is full and comprehensive coverage.

All individuals working in either the public or private sector need protection and irrespective of the nature of their working relationship. The protection needs to cover all aspects of the employment relationship, from the recruitment process, throughout the period of employment and after the employment relationship has ended. In addition, members of Works Councils need specific protection to ensure they are not inappropriately excluded.

We are calling for a non-exhaustive list of categories of information for which a whistleblower should be protected:

- Corruption and criminal activity
- Violations of the law and administrative regulations
- Abuse of authority/public position
- Risks to public health, food standards and safety
- Health and safety standards at work

- Risks to the environment
- Gross mismanagement of public bodies
- Gross waste of public funds
- Unethical (immoral) behaviour in the public interest, including actions by the company that are contrary to CSR (Corporate Social Responsibility) Codes
- A cover-up of any of the above
- Disclosure of information to journalists

It is reasonable to establish standards aimed at protecting economically valuable information from industrial espionage. However, of no less importance is protecting people who come forward with information about all kinds of wrongdoing – ‘Lux Leaks as well as the “Panama Papers” are just some of many relevant examples.

Based on the principles established by the Council of Europe, United Nations and OECD the legislation should protect all workers from all types of reprisals and incorporate the following principles:

- An individual’s right to voluntarily disclose information;
- The right to disclose applies to all workers, whatever their working relationship, or nature of their contract and even when external to the company;
- An individual should feel safe to freely raise concerns, therefore a prohibition of any civil or criminal measures or any employment related reprisals against the person disclosing information is needed. The workers need protection from all forms of reprisals, this must include adequate measure to prevent the detrimental treatment, such as:
  - Dismissal,
  - Discrimination,
  - Probation,
  - Sanctions,
  - Punitive transfers,
  - Harassment,
  - Changed or reduced duties or hours,
  - Withholding of promotions or training,
  - Change of location,
  - Loss of status and benefits,
  - Blacklisting (see below), or
  - Threats of such actions;
- Safeguarded by clear rules for internal disclosure as well as external disclosure to authorities and the public, including the right to be anonymous when disclosing information;

- Based on a rebuttable presumption, that any disclosure properly made without fraud or deceit, is covered by freedom of expression as such – protected by a reversal of the burden of proof;
- Prohibition of ‘gagging’ clauses in employment contracts and other clauses that prevent workers from blowing the whistle to journalists;
- Guaranteeing that journalists do not need to reveal their sources;
- Guaranteeing the right of a worker to inform and discuss with his/her trade union representatives and to be represented by their union on whistleblowing related matters;
- Right to refuse participation in any wrongdoing;
- Procedures for the protection of whistleblowers should be agreed with trade unions in both the private and public sector;
- Safeguarded by effective dissuasive sanctions against those who take detrimental action against whistleblowers,
- Preventing the detrimental treatment from happening, importantly measures to prevent the dismissal of whistleblowers from taking place;
- Disclosures should be investigated promptly;
- Procedural measures for effective whistle-blower protection in the event of a trial;
- The establishment of supervisory arrangements, such as an ombudsman, that are genuinely independent, can ensure that disclosure are properly acted upon. Those can furthermore provide up to date information about the challenges related to the freedom of expression for workers, which may lead to improvement through better practices.

The current momentum, both in the European Parliament and among trade unions and non-governmental organisations, supporting the call for whistleblower protection is an opportunity not to be missed. The ETUC and many of our affiliates have joined the platform WhistleblowerProtection.EU, an initiative of our affiliate Eurocadres. The platform statement calls on the Commission, Council and Parliament to work for legislation providing an EU-wide whistleblower protection. The platform welcomes more members and ETUC affiliates are encouraged to be active including a petition which is hosted on the campaign website [www.whistleblowerprotection.eu](http://www.whistleblowerprotection.eu) .

#### One specific form of reprisal is blacklisting of workers

The black listing of workers who speak up about rights at work or who blow the whistle represents a particular violation. It is most commonly used against trade union representatives who blow the whistle. This practice violates the fundamental right to freedom of association and to organise in a union.

Workers must have the right not to be blacklisted. Keeping or placing a worker on a blacklist or the use of such a list, for example to refuse employment or discriminate against a worker must be unlawful. Those who compile, pass on or use blacklists should be made criminally liable. Everyone named on a blacklist should be compensated.