

Whistleblower Protection in the European Parliament and EU Member States

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Introduction

Over the last few years whistleblower protection has become a hot topic at various political levels. Thanks to events such as the leaking of the Panama Papers, ruling elites at both European and national levels are put under more intense public scrutiny, and are more vividly encouraged to facilitate channels that allow for reporting wrong-doing. Nevertheless, despite rhetorical and actual commitment to transparent and democratic governance, the level of whistleblower protection seems to vary greatly among the EU institutions and EU member states. As such, the following paper will seek to present an overview of the whistleblower protection in the European Parliament and four EU countries – Belgium, France, Germany and Lithuania, and will try to identify the biggest impediments for more comprehensive whistleblower protection. A number of recommendations will follow, suggesting on a general level how legal protection could be improved, and what further steps should be taken by both European and national institutions.

European Parliament

In January 2014, EU institutions were requested to introduce internal whistleblowing rules covering the protection of whistleblowers. After long debates on the improvements of the European regulation of whistleblower protection, the European Parliament only adopted these internal rules in January 2016. Aside from the internal rules of the institution, codes of conduct and procedures within the political groups can provide an alternative framework for parliamentary personnel to refer to.

However, both the institutional rules and rules on the level of the group or party do not give an appropriate level of protection to the largest group of potential whistleblowers: the MEP assistants. While they are signed by the Parliament, the employment of assistants is provided by the MEP, and not the institution itself. This is a big issue, for the internal rules of the Parliament foresee for a whistleblower to be transferred internally, which is thus not possible for MEP assistants.

This problem is offset by the lack of protection MEP assistants have from their MEP. An MEP has the possibility to cite “a loss of trust” as sufficient reasons for termination, giving him a very large discretion to act. It would not be hard for an MEP to explain that he has “lost his trust” in an assistant who blew the whistle on him, and thus to fire the whistleblower, with very little chance of legal protection, remedy or compensation for the latter. An assistant

reporting a misconduct is thus likely to lose his or her job, and would find it very difficult to be hired by another MEP, given the large role confidence plays in the relation between an MEP and its assistants.

This is not compensated by rules internal to groups and parties. An MEP assistant, in a short interview, indicated that while he or she knew where to find and how to use the relevant provisions on a legal and institutional level, she was ill-aware of the rules her party and her group had in place on the matter.

In conclusion, while the recently drafted institutional rules are a step in the right direction, the largest and most important group of MEP employees is still relatively unprotected, and their employment situation is already very much dependent on their employer (the MEP) to begin with. Stronger protection on an institutional level is necessary, and groups and parties must do more to provide adequate support to their assistants if they want to ensure their full accountability to their constituencies.

Belgium

Belgium scored quite low on international rankings concerning the protection of whistleblowers in recent years, due to its lack of a central registration point in the public sector. The most extensive study of whistleblowing protection in the public sector, Transparency International's 2013 report entitled 'Providing an alternative to silence: towards greater protection and support for whistleblowers in Belgium', was very critical for both the public and private sectors. A 2014 law on whistleblower protection tried to remedy this, creating a 'Central Registration Point for Integrity Violations', as well as several sector- and institution-specific registration points on a national level. A similar registration system already existed in the public sectors on a regional level since 2012. Politicians claimed that with these changes, Belgium now falls in line with international recommendations as issued by the UN and the Council of Europe.

However, the instituted system is one with a two-track approach, in which whistleblowers providing accurate reports are protected but those issuing a "misleading" report can be sanctioned. The possibility of sanctions based on the vague and undefined concept of "misleading information" is a strong disincentive for potential whistleblowers, who cannot know in which of both parallel systems they will fall before stepping forward.

The continued lingering of several scandals in which whistleblowers in the law enforcement domain faced strong obstacles to judicial protection as well as concerted public character assassination for political motives, however, shows that Belgium still faces a legal deficit in the protection of whistleblowers, and perhaps even more importantly, a public mentality problem. Several large HR firms that work for the public sector on regular occasions describe 'whistleblower protection' on their websites as "Anglo-Saxon systems", which are "very controversial", and enumerate long lists of ethical criteria a potential whistleblower should take into account. Very few responsibilities are put on employers, and outdated information is given on the legal protection of whistleblowers. Whistleblowing is associated with childish 'blabbing' and 'tale-telling'. There is very little effort from public institutions to rectify this

view. This indicates that whistleblowers still face a strong stigmatization, and often face cultural obstacles that go beyond legal provisions.

France

In France, despite several scandals revealed by whistleblowers, legislation is still fragmented on their protection. Under the pressure of the civil society, NGOs and Transparency International, from 2007 to 2013, several laws were adopted. In June 2016, deputies adopted a new regulation on the protection of whistleblowers and the creation of a new anti-corruption agency. This legislation will be based on strict rules and procedures for the whistleblower, in order to prevent any abuses. Nevertheless, this necessary safeguard creates a constraining procedure that might refrain people holding important information from blowing the whistle.

Concerning civil servants, little has been done on the protection of whistleblowers in the public administration and in the Parliament. For the moment, the penal procedure imposes civil servants to alert the attorney general in case they witnessed mismanagement in their work. In April 2016, the *Conseil d'Etat* released several propositions on whistleblower protection in the administration. In particular, the report suggests the creation of internal alert mechanisms. But as the parliamentary assistants are no civil servants, the legislation does not apply to them, and they could be considered as "contractors". Several suggestions could be made on the protection of assistants, such as adding relevant dispositions in the internal code of conduct of the institution, and the designation of a contact-person.

Germany

The German Parliament (Bundestag) has rejected initiatives to regulate the protection of whistleblowers in administration and private companies on several occasions, most recently in June 2015. The proposition was made by the Greens and supported by the Left, but rejected from the coalition of CDU/CSU and SPD. Until now, the highest courts in Germany have mostly decided that the existing civil and labour law provides sufficient protection for employees. The courts have also affirmed that employees should seek internal ways of reporting first before going public as part of the loyalty duties towards their employers.

A turn might come after the federal states Brandenburg and Niedersachsen put the topic on the agenda of the conference of justice ministers of the federal states, which took place on the 1st and 2nd June 2016. The justice ministers found that the protection of whistleblowers is limited to a few norms and decisions and requested the German federal government to review the legislative standards of protection.

Despite some parties' engagement for a higher level of safety for whistleblowers, no explicit regulation or internal rules for staff or parliamentarians exist in any of the political groups. In case of whistleblowing, the working council of these groups would be the first contact person.

Lithuania

In Lithuania, legal protection of whistleblowers is low, and there is lack of political will to strengthen its framework. According to an extensive report published by Transparency International 2013, level of whistleblower protection in Lithuania was 'None or Very Limited', and little has changed over the last few years. Despite several attempts by Transparency International Lithuanian Chapter and other societal actors, there are still no provisions ensuring comprehensive law that protects whistleblowers from retaliation, and no whistleblower provisions are included in Lithuania's labour, civil servant, criminal, corruption prevention or environmental laws.

While recent corruption scandals in Lithuania have proven the necessity for a comprehensive set of laws allowing prevention of wrong-doings, Lithuanian government claims that current protection of whistleblowers is sufficient. A few years ago the Ministry of Justice announced that provisions in the Labour Code, the Criminal Code as well as measures foreseen by the United Nations Convention against Corruption provide an adequate support to whistleblowers; however, in reality they are often too vague and do not ensure sufficient anonymity and protection. Recent studies show that even in those institutions that have introduced internal channels to report wrong-doing are not capable of ensuring anonymity of whistleblowers, and do not provide enough information on how their reports are handled. Furthermore, only a handful of institutions explicitly encourage reporting potential cases of corruption, and clearly state the procedure of follow-up.

Such absence of political will to strengthen the legal protection of whistleblowers puts pressure on society to hold their politicians accountable directly; however, public demand and participation remain low. Studies reveal that currently less than one in five Lithuanians would report a case of corruption, as citizens are afraid of retaliation and even possible lawsuits on grounds of defamation. Subsequently, a vicious circle of poor whistleblower protection and low public pressure discourages Lithuanians from increasing the transparency of their government, and allow many corruption cases go unnoticed. This risks creating an accountability deficit.

Conclusion

To conclude, whistleblower protection is still fragmented in Europe, and no consistent examples of whistleblower protection were found in our case studies. Both national and European institutions lack comprehensive legislation protecting whistleblowers, and show little political will to improve their legislative frameworks. Furthermore, in institutions where legal protection of whistleblowers exists, provisions are often vague, do not ensure anonymity and fail to include all civil servants and their employees, such as assistants of the MEPs. Subsequently, legal protection remains rather scarce and does not provide sufficient support for those ready to blow the whistle. Reasons for such situation vary, but mostly involve underestimated role of whistleblowers in a democratic and transparent decision-making, as well as their negative image perceived by the society.

Recommendations

- Ensure the proper implementation of the existing rules on whistleblower protection
- Increase the visibility of existing whistleblowers protection measures, and provide civil servants with at least a minimum training on how to report possible wrong-doings.
- Create legislation that protects all types and groups of civil servants
- Encourage parties and political groups to take responsibility for their personnel and to set up whistleblower protection systems on a party level
- Provide sufficient safe-guard from any form of retaliation by ensuring the anonymity of the whistleblower, and helping him or her with relocation
- Work on the social and cultural norms concerning whistleblower practices and raise awareness on the role whistleblowers play in ensuring accountability in the democratic society

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