

Consultation response

European Commission Survey on Whistleblower Protection

25 May 2017

(Submitted via online form)

Q: Do you think that whistleblowing should be protected?

Yes

Q: To your mind, how often are workers reporting their concerns about threats or harm to the public interest?

AFME has no comments in response to this question.

Q: To your mind, which of the following are the most important reasons why a person might decide not to blow the whistle?

- Fear of financial consequences - important
- It would be an act of disloyalty - important
- Negative attitudes towards whistleblowers - important
- Fear of bad reputation - important

Q: To your mind, what are the BENEFITS of rules obliging public and private sector organisations to protect whistleblowers?

- Strengthen compliance with the law by public authorities and businesses - important
- Strengthen freedom of expression - important
- Foster a workplace culture of transparency and accountability - important
- Enhance workers' wellbeing - important

Additional comments:

AFME suggests that an additional benefit of whistleblower protection is strengthened compliance with a firm's conduct rules programme, as employees feel further encouraged and supported to raise their concerns.

Q: To your mind, in which areas are rules on whistleblower protection beneficial?

- Contribute to the fight against fraud and corruption - important
- Contribute to the proper management of public (national and EU) funds - important
- Improve investors' trust - important
- Contribute to the fight against tax evasion and tax avoidance - important
- Enhance protection of public health and safety - important

- Encourage fair competition - important

Additional comments:

AFME's response is in the context of financial services, and as such is not intended to reflect the benefits of whistleblower protection in other areas.

Q: To your mind, what are the DRAWBACKS of rules obliging public and private sector organisations to protect whistleblowers?

AFME strongly supports the protection of whistleblowers and as such has no comments in response to this question.

Q: In your opinion, which of the following aspects that raise awareness of whistleblower rights and procedures are important for effective whistleblower protection?

- Clear definition in law of the threats to the public interest covered by whistleblower protection - important
- Clear general information and awareness raising policies by the state (e.g. information campaigns) concerning rights of whistleblowers (including on advice and assistance) and applicable procedures - important
- Clear information by private or public sector organisations to their employees concerning rights of whistleblowers (including on advice and assistance) and relevant internal procedures - important

Additional comments:

AFME considers that communication of internal whistleblowing procedures is particularly important. AFME's members seek to encourage employees to make use of internal channels, whilst also providing information on, and not preventing use of, public procedures.

Q: In your opinion, which of the following aspects are important for effective whistleblower protection?

- Channels in organisations/businesses for internal reporting of wrongdoings - important
- Channels for reporting of wrongdoings to oversight institutions - important
- Protection in case of disclosure to the public (e.g. media, web platforms, etc) where channels for internal reporting and for reporting to oversight institutions are not available, not functioning properly (or cannot reasonably be expected to function properly) - important
- Proper investigation of the whistleblower reports or disclosures - important
- Protection against retaliation at work - important
- Protection of whistleblowers in administrative proceedings - important

Additional comments:

AFME is strongly supportive of protection for whistleblowers who have an honest belief in the foundation of their allegations. Consideration must be made, however, for cases where allegations turn out to have been submitted without such honest belief.

Q: In your opinion, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection?

- Protection of confidentiality of whistleblower's data, including where latter is anonymous but identifiable - important
- Protection against dismissal, e.g. interim relief to suspend dismissal, right to reinstatement in the work place, etc. - important
- Protection against suspension - important
- Protection against demotion - important
- Protection against loss of promotion opportunities - important
- Protection against punitive transfers - important
- Protection against reductions in or deductions of wages - important
- Protection against harassment by superiors and/or colleagues - important
- Protection against blacklisting - important
- Compensation for dismissal or financial loss - important

Additional comments:

AFME notes that it can be extremely difficult to guarantee the confidentiality of a whistleblower's data (including their identity), particularly where the allegation has been made by an individual in a small team or organisation. However, organisations should be required to make best efforts to maintain confidentiality.

Q: In your opinion, which of the following protection measures for third parties are important in the context of whistleblowing?

- Requirement that the whistleblowers reasonably believe the information they disclose to be true - important
- Requirement that the disclosure concerns a matter of public interest - important
- Protection of the rights of the person/business affected by the report (e.g. rights of dignity, personal data, business secrets and respect of the rights of defence) including protection against abusive/malicious reports - important
- Rules aimed at balancing the interest of employers to manage their organisations and to protect their interests with the right of the public to know when their interests are at risk - important
- Rules aimed at balancing professional secrecy obligations with the right of the public to know when their interests are at risk - important

Additional comments:

Regarding the requirement to act in a disinterested way, AFME considers that whistleblowers may have a strong personal interest in the outcome of the allegations and any subsequent investigation, and that this may be for entirely honest and legitimate reasons. Therefore, it may, in practice, be difficult for the whistleblower to demonstrate that they have acted in an entirely disinterested (i.e. impartial) manner.

Q: Do you know of rules in place in your country of residence (private citizens) or establishment (for organisations) on the protection of whistleblowers?

AFME is pan-European and as such has no comments in response to this question.

Q: Whistleblowers enjoy very different levels of protection across the various EU countries, and in some EU countries they enjoy limited or no protection at all. In your opinion, what are the negative impacts likely to result from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole?

- Negative impact on the protection of the public interest also of those Member States providing stronger whistleblower protection or of the public interest of the EU as a whole (in areas such as the fight against fraud and corruption, tax evasion and tax avoidance, misuse of personal data and market abuse, protection of public health and safety, food safety and the environment, protection of fair competition) - likely
- Negative impact on the protection of the financial interests of the EU (both as regards EU expenditures, for example fraud to EU grants, as well as EU revenues, for example fraud to customs duties) - likely
- Negative impact on the well-being of workers whose companies move from a Member State offering a higher level of whistleblower protection to a Member State with lower or no protection - likely
- Distortion of competition at EU level resulting from the lower level of legal compliance with relevant rules, and of integrity and accountability in Member States where there is lower or no whistleblower protection - likely

Q: In your opinion, what are the positive impacts likely to result from the absence of whistleblower protection in some EU countries for other EU countries and the EU as a whole?

AFME has no comments in response to this question.

Q: Considering what you have indicated as important aspects for effective whistleblower protection, in your opinion who should establish legally binding minimum standards on these aspects?

EU legislation (in conjunction with national legislation)

Q: In which area should the EU offer (more) support to the Member States to provide whistleblower protection:

- Fight against tax evasion and tax avoidance - important
- Fight against anticompetitive practices (cartels etc.) - important
- Increase of accountability and transparency in industry and business - important
- Fight against fraud and corruption - important
- Good management of public (national and EU) funds - important

Additional comments:

AFME's response is in the context of financial services, and as such is not intended to reflect the effect of whistleblower protection on other areas.

AFME considers that the key to any minimum standards in this area is harmonisation, at a global level where possible. Organisations should not be subject to conflicting standards in different jurisdictions, especially as many will apply whistleblowing policies and procedures at a group level.

Q: Please indicate, for which of the minimum standards within any potential EU legislation you would consider horizontal, generally applicable, whistleblower protection and/or sectorial legal provisions more effective. EU sectorial legal provisions refer to the areas in which the EU should offer support to the Member States, as indicated in the previous question

	EU horizontal legal provisions
Channels in an organisation/business for reporting of wrongdoing	X
Channels for reporting to relevant public regulatory bodies (i.e. regulatory agencies in specific sector)	X
Channels for reporting to horizontal independent body (e. g. ombudsman)	X
Channels for reporting to sectorial independent body (e. g. concerning financial services, energy, taxation, etc.)	X
Channels for reporting to law enforcement (e. g. police, prosecution)	X
Protection in case of disclosure to the public (media, web platforms, etc) where internal reporting and reporting to oversight institutions are not available, not functioning properly or cannot reasonably be expected to function properly.	X
Right of workers to be informed on the whistleblowing provisions and procedures applicable at the specific workplace	X
Proper investigation of the relevant reports and disclosures	X
Protection of the confidentiality of the whistleblower's data	X
Protection of the rights and interests of third parties implicated	X
Protection of whistleblowers against retaliation at work	X
Protection of whistleblowers in administrative proceedings	X

Q19: Any additional comments?

AFME and its members support the idea of encouraging all employees to blow the whistle where they suspect misconduct, confident that their concerns will be considered and that there will be no personal repercussions. As stated above, employees should be encouraged to use internal whistleblowing channels in the first instance, though we also agree that they should be informed of public procedures, and in no way prevented from also using these.

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