

ANTI-CORRUPTION
POLICY SERIES

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WHISTLEBLOWER PROTECTION ESSENTIALS FOR EUROPE

POLICY GUIDANCE

10 FUNDAMENTAL
PROVISIONS OF THE
EU DIRECTIVE ON
WHISTLEBLOWER
PROTECTION

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KOHN, KOHN & COLAPINTO, LLP

The whistleblower rights law firm internationally recognized as being the most highly skilled and successful – handling the toughest cases and holding the biggest fraudsters accountable

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EUROPEAN CENTER FOR WHISTLEBLOWER RIGHTS

The first independent, non-profit organization dedicated to strengthening whistleblower protections, supporting whistleblowers and investigating cases throughout Europe

WHISTLEBLOWER RIGHTS FOR SUCCESS

The European Union approved a [Directive](#) in October 2019 that requires all EU countries to enact whistleblower rights and protections by December 17, 2021. This gives policy-makers and citizens an opportunity to [implement the Directive](#) and [craft effective whistleblower laws](#) designed to fight corruption, protect the environment and promote the public interest.

1) SCOPE

Whistleblowers must be broadly protected if they report violations of law, abuses of authority, and threats to the environment. Disclosures covered must include reports of violations of laws and regulations related to climate change, money laundering, [foreign bribery](#), and [international corruption](#).

2) CONFIDENTIALITY

[Confidentiality](#) is the best defense against retaliation. If an employer does not know who a whistleblower is, they cannot retaliate against or fire the person. Provisions strictly protecting whistleblower confidentiality should be enacted, and there must be mechanisms to hold officials who leak the identity of a whistleblower accountable.

3) DAMAGES FOR VICTIMIZATION

If a whistleblower demonstrates that they were subjected to retaliation, they must be able to obtain a remedy that would make them **completely whole**. This should include reinstatement, front pay, back pay, restoration of benefit, compensatory and punitive damages, and attorney fees.

4) INCENTIVES FOR WHISTLEBLOWERS

Whistleblowers who provide law enforcement with original information that is used to successfully prosecute corrupt officials or corporate criminals serve an invaluable public service and should be **rewarded** for the risks they take in having the courage to file a report.

5) FREEDOM OF SPEECH

Nondisclosure agreements (NDAs) that prevent employees from reporting crimes to law enforcement agencies must be strictly prohibited. All such agreements must be unenforceable, and corporations that require employees to sign illegal NDAs must be subjected to fines and penalties.

6) DESIGNATED WHISTLEBLOWER OFFICE

In order to ensure that whistleblowers are protected, and their information is forwarded to the proper authorities, a Whistleblower Office should be established to ensure confidentiality and establish a safe and secure reporting mechanism.

7) ATTORNEY FEES

Without the ability to obtain high-quality lawyers, whistleblowers are severely prejudiced. All private rights of action available for whistleblowers to sue a retaliator must include provisions allowing attorneys who are successful in litigation **to be compensated by the retaliator at prevailing market rates**.

8) PREVENT CHILLING EFFECTS

Firing a whistleblower instills fear. Whistleblower laws must target the “chilling effect” caused by retaliation. This includes preliminary injunctive relief, treble damages whenever retaliation is intentional, and the ability to order “affirmative relief” to cure any chilling effect.

9) RETALIATION AS OBSTRUCTION OF JUSTICE

Whistleblowers witness crimes. Retaliating against any person who reports truthful information concerning a possible crime to official law enforcement officers is an obstruction of justice, and this must be recognized in whistleblower laws.

10) PROTECTION FROM LAWSUITS

Article 22 of the Directive could be interpreted in such a way that would expose whistleblowers to retaliatory lawsuits. Laws passed under this provision must be limited to strict constitutional rights of defense. Whistleblowers should still be protected from discovery by the other provisions of the Directive, and any law that permits corporations to recover attorney fees from whistleblowers, or that allow lawsuits against whistleblowers who follow proper disclosure methods, must be repealed.

KEY POINT

Respected **data-driven studies** prove that reward laws work. Because rewards may be predicated on successful enforcement actions and the level of assistance provided, **there is little to no incentive** for “fake whistleblowers” to report frivolous or unsupported allegations. Because many whistleblowers also make internal disclosures before alerting authorities, rewards provide the best protection against retaliation.

KEY POINT

From our experience, given the fact that whistleblower laws are rapidly evolving throughout the world and a significant amount of illegal conduct has international implications, whistleblowers need counsel to safely and effectively navigate the protected disclosure process.



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