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EU Whistleblower Protection: Falling short whein it matters most

Three years on: Are whistleblowers any safer in the EU?



Imagine reporting serious misconduct at work, expecting justice, and instead losing your job. That’s exactly what happened to Jan Benýšek, the head of the insolvency division at the Czech Ministry of Justice. After raising concerns about his superior’s alleged interference in insolvency exams, the government, acting on the recommendation of the Minister, approved the termination of Benýšek's position. This decision was widely regarded as a retaliatory measure against his whistleblowing activities.

Benýšek’s case highlights a troubling reality: Three years after the EU Whistleblower Protection Directive’s deadline, many member states are still failing to safeguard those who expose wrongdoing.

Whistleblowers: A crucial line of defence

Whistleblowers play an essential role in rooting out corruption, misconduct, and practices that threaten public safety, the environment, and EU finances. By speaking up, they help tackle societal challenges and save millions of euros. They often do so at immense personal and professional risk. Protecting them is not just an ethical obligation – it’s a practical necessity for fostering transparency and accountability across Europe.

Adopted in 2019, the EU Whistleblower Protection Directive was a landmark step aimed to address this goal. It requires member states to establish safe and confidential channels for whistleblowing, guarantee protection against retaliation, and ensure fair compensation for reprisals. Yet, as Benýšek’s story illustrates, the reality often falls short of these promises.

Case in point: The Czech Republic’s gaps

In early 2023, the Czech Republic adopted a law transposing the EU directive. Yet, when Benýšek reported the alleged misconduct of his superior, Deputy Minister of Justice Antonín Stanislav, he was sidelined. His position was eliminated through an “organisational restructure” – a tactic critics say is notoriously used by Czech politicians to dismiss unwanted state employees.

Though Benýšek challenged his dismissal, the courts ruled that retaliation protections did not apply to structural changes, despite the Directive's explicit prohibition of "any form of retaliation," including layoffs, dismissals or "equivalent measure." Ironically, the Ministry of Justice, the institution tasked with upholding whistleblower protection, failed to deliver meaningful action. In the end, Benýšek succeeded in a subsequent selection process for his old job, but this was driven more by public pressure than by legal protections.

A widespread problem across the EU

Sadly, Benýšek's ordeal is not unique. Transparency International's 2023 review of whistleblower protection laws in 20 member states found critical gaps. Updates from the remaining member states reveal an alarming trend: 25 out of 27 countries still require urgent amendments to meet the directive's minimum standards in at least one of the four areas reviewed. None have adopted all of the directive's higher, optional protections, underscoring the widespread need for reform.

The European Commission's July 2024 report reinforces these findings, highlighting significant shortcomings:

- Limited scope: Whistleblower protections should cover a wide range of offences, from corruption to environmental violations. Yet, only 12 countries have laws with an adequate scope. Nations like Greece, Hungary, and Romania fail to cover all forms of corruption under their whistleblower protection laws, leaving considerable gaps in ensuring comprehensive oversight.
- Weak penalties: Violations of whistleblower protections must come with serious consequences. However, nine countries do not penalise all forms of retaliation, obstruction of reporting, or breaches of confidentiality.
- Inadequate compensation: Fair compensation is crucial for whistleblowers facing retaliation. Yet, only 11 countries guarantee both full financial compensation and non-financial remedies, such as reinstatement to their original roles, and eight countries ensure full financial compensation alone. This leaves many whistleblowers in other EU member states vulnerable and hesitant to come forward. Ensuring access to both forms of redress is vital to achieving justice and mitigating the professional and personal harm whistleblowers often endure.

Real stories, real stakes

Cases like Benýšek's expose the gaps in legal protections, but they also demonstrate how courageous whistleblowers persist despite the odds. In Ireland, for instance, a 2023 case set a powerful precedent. A massage therapist, denied pay and let go after refusing to provide "sexual services" to clients and her boss, reported her employers despite her vulnerable position as a non-EU worker. Recognising the significant emotional and professional harm she endured, an adjudication officer awarded her an unprecedented €91,000 – five years' pay – far exceeding standard financial loss compensation.

This landmark decision shows authorities can align rulings with the directive's intent, ensuring whistleblowers receive fair treatment.

The importance of gender and vulnerability considerations

Protecting whistleblowers requires an inclusive approach, recognising that individuals from marginalised groups often face heightened risks. For example, women, migrants, or those in precarious work environments may encounter unique barriers to reporting wrongdoing. The Irish case illustrates how considering factors like gender, nationality, and economic vulnerability can lead to fairer, more effective outcomes. By tailoring protections to account for these dynamics, member states can make whistleblowing safer and more accessible for all.

What needs to change?

Protecting whistleblowers can't just be a tick-box exercise. Member states must act decisively to plug the gaps in their laws and align fully with the directive. This includes:

- Expanding the scope of protections to cover all relevant offences.
- Imposing meaningful penalties for any violation of whistleblower rights.
- Ensuring robust remedies, guaranteeing both full financial compensation and non-financial remedies, such as reinstatement for those who faced retaliation.

But Governments cannot act alone. Stakeholders across the board – courts, businesses, public institutions, and civil society – must step up.

Most whistleblowers initially report concerns internally. This makes it essential for organisations to create safe, effective mechanisms for handling such reports. Transparency International is helping organisations achieve this with practical tools, including best-practice guidelines and a self-assessment framework for internal whistleblowing systems.

Courts and adjudication bodies play a critical role in interpreting and enforcing whistleblower protections. When rulings are aligned with EU standards, as seen in the Irish case, they not only deliver justice but also set a powerful precedent for other jurisdictions.

The path forward

Benýšek's story is a stark reminder that whistleblowers can't afford half-measures. Their courage fuels accountability and transparency, and they deserve comprehensive, enforceable protections. As citizens, we must demand more from our governments. Transparency International will continue to monitor and report on progress and advocate for stronger laws and better enforcement.

Only by fully implementing the EU Whistleblower Protection Directive and adopting best practices can we ensure that those who speak out are heard, protected, and empowered to make a difference. After all, a fairer EU begins with safeguarding those who risk everything to uphold the public good.

Fuente: https://www.transparency.org/

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