

MAKING WHISTLEBLOWING WORK FOR EVERYONE

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Whistleblower protection has received increasing attention from EU lawmakers. The European Commission will make a proposal to address the issue of whistleblower protection at EU level towards the end of 2017. Meanwhile, the European Parliament is working on its next report on whistleblower protection. But how to design a whistleblower protection system that works for everyone? Accountancy Europe brought together key stakeholders to answer this question.

DO WE NEED WHISTLEBLOWER PROTECTION?

The answer is yes! Overall, all speakers agreed that whistleblower protection is important. Besides, accountancy firms have already taken measures to ensure this. For example, at Mazars someone that retaliates against a whistleblower can get disciplinary action.

However, persons that are reported on also have rights. Angela Foyle (BDO UK) explained that her organisation therefore always carefully investigates the evidence from internal reports.

Aside from protection, it is also important to follow up on reports. As Accountancy Europe President Edelfried Schneider explained “speaking up is pointless if nobody is listening”.

WHAT IS A WHISTLEBLOWER?

When discussing how a proper whistleblower framework should look like, the first step is defining what a whistleblower is. Despite the many debates and reports on the issue, there is still no common understanding of what a whistleblower is and who deserves protection.

For Virginie Rozière (Member of the European Parliament), the definition of whistleblowing should be broad and should not depend on the status of the person in an organisation (e.g. employee, advisors, etc.). Similarly, Professor Catriona Paisey believed that whistleblower protection should apply to both employees and others, such as subcontractors.

Former whistleblower Eric Ben-Artzi explained that for him whistleblowing is about protecting the stakeholders and the company.

HOW TO REPORT?

There are many different channels through which whistleblowers can speak up. According to Professor Paisey it is better to provide a combination of such channels to potential whistleblowers. Ms. Foyle explained that

employees in her organisation can go to more senior colleagues or to a designated person. Furthermore, Jean-Luc Barlet (Mazars) clarified that Mazars had set up a dedicated hot line.

Andrew Pepper-Parsons (Public Concern at Work) explained that the UK whistleblower protection framework is 'intuitive' when it comes to reporting channels; whistleblowers first need to exploit internal channels before going to the authorities or, ultimately, the public.

Several speakers also agreed on the need to create awareness about the speak up channels that are in place. For example, Mr. Pepper-Parsons pointed out that in the UK 59% of people do not know that there is a whistleblowing framework. Moreover, Ms. Foyle pointed out that organisations have a self-interest to inform whistleblowers about the outcome of an investigation since they might otherwise think their report was ignored and go outside the organisation.

HOW TO CREATE TRUST?

It is important to have the right tone at the top and to create a culture where people are not afraid to speak up. Accountancy Europe CEO Olivier Boutellis-Taft added that managers need to listen every day, not only when someone is blowing the whistle.

The accountancy profession – especially internal auditors - can also support trust in reporting channels. For example, Mr. Pepper-Parsons believed that to make sure reporting systems work, they need to be audited. This occurs in both BDO and Mazars.

There is still a lot of debate on whether whistleblowers should be able to report anonymously. Dr. Sule pointed out that anonymity and confidentiality are different concepts. Mr. Ben-Artzi decided not to remain anonymous to give more weight to his report. Ms. Rozière believed whistleblowers should have the option to remain anonymous. While in favour of confidentiality, Professor Paisey was more sceptical about the idea of anonymity. However, she acknowledged that anonymity might be desirable in certain circumstances. For example, when there is a risk that persons inside an organisation try to find out who reported something confidentially.

WHAT LEGAL FRAMEWORK?

The EU cannot act without having received the competence in the Treaty to do so, i.e. there needs to be an appropriate 'legal basis'. Unfortunately, both the European Parliament and the European Commission are not yet sure as to what the legal basis for an EU initiative could be.

Panellists shared their views on what is important for an EU whistleblower protection framework. According to Mr. Ben-Artzi, the US case shows that rather than developing a complex system, it is better to focus on simplicity and enforcement. Similar recommendations were given by Mr. Barlet and Ms. Foyle. Finally, Mr. Pepper-Parsons was against being too descriptive in the legislation, especially when it comes to defining issues such as 'public interest'.

NEXT STEPS

The following events are currently scheduled:

- July 2017: Publication Commission study on whistleblower protection
- October 2017: Adoption of the European Parliament report on whistleblower protection
- Q 4 2017: Publication Commission initiative on whistleblower protection