Protection of whistleblowers in Europe.

28 MARCH 2026

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PROTECTION OF WHISTLEBLOWERS AS A KEY ASPECT IN PROSECUTION OF ORGANISED CRIME: AN OVERVIEW AT EUROPEAN LEVEL

In recent decades, the proliferation of new techniques and tendencies of organized crime has challenged its police and judicial prosecution. The appearance of new ways of committing crimes and violating rules, added to the surge of criminal groups, increases the pressure on States to adopt different measures to guarantee crime's prevention and prosecution.

According to the Global Organised Crime Index 2025, the economic growth and expansion presented in Europe, along with what it is called a "favourable business environment", potentially permits criminal enterprises to submerge into logistic networks, via money laundering and public collusion. Financial crime is seen as the most damaging crime in Europe, with a rise in criminal groups in the region since 2021.

In any event, despite European standards in the matter having evolved, the lack of protection means that reporters and whistleblowers could face retaliation, a phenomenon that is significantly increased when their anonymity cannot be guaranteed. Equally, the very nature of organised crime involves complex structures, whose core operations are difficult to uncover without internal information.

Furthermore, economic offences such as corruption, tax crimes, money-laundering and funding of terrorism are crimes which have a stronger presence in public administrations and in private corporations, so the creation of adequate channels for reporting is more than essential. The importance of their specific protection in organised crimes is explained because many of these crimes involve structures embodied in enterprises and are considered to be "transnational", so that their prosecution needs to be regionally harmonised.

In the European Union, the Council Framework Decision 2008/841/JHA on the fight against organised crime defines a "criminal organisation" as "a structured association, established over a period of time, of more than two persons acting in concert with a

view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years", whose purpose is to gather a benefit. Likewise, the organisation is not created randomly, but it is shaped for committing crime. Moreover, the roles of its members do not necessarily need to be predefined. Finally, there is not always a developed structure.

Besides, the Council of Europe published a "crime analysis" in 2002 made by its Group of Specialists on criminal law and criminological aspects of organised crime, which shapes two important premises. Firstly, it relies on violence and intimidation as the main components of the execution of illegal acts. Additionally, it conceptualises corruption not as an example of organised crime itself but as a procedure for the commitment of organised crime. Even if corruption has been stated as an organised crime by different international instruments such as UNCAC and UNTOC, this point is exceptionally relevant, as it could differ the way in which corruption is approached.

The Global Organized Crime Index 2025 done by the Global Initiative Against Transnational Organized Crime yields some relevant data about how criminal markets and criminal actors operate in European countries. In spite of its position as the fourth continent in terms of criminality, the rate has increased from a 4.48 in 2021 towards a

4.74 in 2025, showing a boost in criminal records. Indeed, Europe remains as the second most criminal continent in terms of financial crimes. Under all circumstances, the Index 2025 highlights the outperformance of Europe in the response towards organized crime, emphasizing its resilience in international cooperation, laws and policies adopted and law enforcement.

Enhancing prosecution requires more and more people reporting incidents, illegal and criminal acts, wrongdoing and unethical behaviours. Usually, reporters do not feel comfortable reporting, as they do not feel secure due to the risk of retaliation.

According to a survey regarding whistleblowing in Europe in 2022 made by Navex – a risk and compliance solutions provider – 49% of the respondents alleged fear of retaliation as the most important barrier when reporting illegal behaviours at the workplace.

In relation to organised crimes' exposure, Abukari, Kreissl and Turksen (2023), when talking about tax crimes, argue how whistleblowing is thought to be a viable path for "uncovering such hidden crimes" having an evidential positive effect in their prosecution. The same authors argue that in consequence, there is a necessity for protection that motivates whistleblowers who are usually exposed to several perils such as "reputational damage, demotion, and employment termination as well as physical and psychological harm".

The urgency of whistleblowers protection has been recognised by certain European institutions. In particular, the European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance (2018/2121 (INI)) declares that "whistle-blowers play a crucial role in strengthening democracy in societies in the fight against corruption and other serious crimes or illegal activities, and in the protection of the Union's financial interests". Furthermore, the explanatory memorandum of the Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014, "recognises the value of whistleblowing in deterring and preventing wrongdoing, and in strengthening democratic accountability and transparency".

The European framework can be distinguished between the one belonging to the European Union and the one to the Council of Europe

Despite complications while adopting it, the nucleus of the European Union's regulation in the protection of whistleblowers is represented in the Directive (EU)

2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

On the one hand, the Directive applies to breaches falling within the scope of Union acts in a number of specific areas, such as the following: public procurement; financial services, products and markets, and prevention of money laundering and terrorist financing; protection of the environment; public health; consumer protection; breaches affecting the

financial interest of the Union; breaches relating to the internal market, as well as some others.

On the other hand, the Directive is applied to "persons" working in the private or public sector with information of breaches in a work-related context. It is relevant to point out that the Directive does not strictly define "whistleblower", but prefers simply to refer to "persons who report breaches of Union law". Regardless, the Directive extends its application towards a number of specific individuals such as contractors, subcontractors, individuals reporting breaches of law while recruiting, volunteers, paid and unpaid trainees, self-employed, shareholders and management, administrative or supervisory bodies. Additionally, the Directive implements two requirements that whistleblowers need to meet at the time of reporting: reasonable motives to believe information provided was true when it was reported and information entering the scope of the Directive.

Finally, the Directive considers three usual methods of reporting: internal – reporting at the whistleblower's workplace – , external – to authorities outside of the workplace -, and public reporting, referring to the media.

The principal legal instrument on the subject adopted in the Council of Europe – without binding force – is the aforementioned Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers. This recommendation does not really differ with the EU's Directive, despite including some material categories that did not appear in the former, such as violations of law and human rights, risks to public health and safety, and to the environment. In any case, as

the Recommendation let States to adopt the measures they consider in relation to this benchmark, topics such as national security, defence, intelligence and public order, while not being directly regulated, are recommended to be considered when protecting whistleblowers.

Apart from the Recommendation, it is worth mentioning the pronouncement of the European Court of Human Rights regarding whistleblowers' protection in *Guja v. The Republic of Moldova.* Iacob Guja, Head of Press at the Prosecutor General's Office, was dismissed for leaking letters revealing political pressure. He claimed he acted in good faith to expose corruption, while the Office cited breach of internal rules. Either way, the Court stated that his dismissal infringed his freedom of expression guaranteed by Article 10 in the European Convention on Human Rights, stating that the applicant had not had effective channels for disclosing the letter, and affirming that the information was categorised as one of public interest as it concerned separation of powers.

At the end of this analysis, the real question is: How have European States implemented whistleblowers' protection?

According to the Report from the Commission to the European Parliament and the Council on the implementation and application of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union

law, only 3 Member States had adequately adopted the complete transposition by the determined deadline (17 December 2021): Malta, Portugal and Sweden. Moreover, 8 countries did it by 2022 and 13 in 2023, while the European Commission started processes for infringement towards 24 State Members and referred 6 of them to the Court of Justice of the European Union.

Regardless of the foregoing, the transposition process is yet to be properly achieved, as the Report outlines some failings and omissions in which States have incurred while transposing. For example, several countries have restricted the definition of breaches under EU parameters, certain Member States incorrectly transposed Article 2 which

summarises breaches threatening financial interests of the Union, and others didn't include categories such as "paid and not unpaid trainees", "volunteers", "contractors" and "suppliers" under the personal scope. In addition, various countries have either omitted some forms of retaliation included in the Directive, or adopted a simplistic prohibition of it. Yet it should be applauded that some countries extended the scope of their laws to areas not considered by the Directive, as well as specific areas of their national laws. An overview can be seen here.

Besides, the Council of Europe launched in June 2022 an Evaluation Report on its aforementioned Recommendation, under the supervision of the European Committee on Legal Co-operation. The Report evaluates the execution of the implementation throughout a survey, responded to by 23 Member States, and exposes some hints regarding whistleblowers' protection in non EU countries. According to the results, Monaco and the Russian Federation lacked a specific law for protecting whistleblowers while the latter did not even legally consider the term "whistleblower". In addition, Armenia managed to create a new reporting platform, and Ukraine, Georgia and the Republic of Moldova enlarged their already built institutions with new powers by implementing the Recommendation. Furthermore, Serbia and the United Kingdom stated that they had not implemented the cited Recommendation as they already had a national law for the specific subject, which however exhibits a necessity of "updating" their national standards to the European ones for a more actual framework. Finally, Georgia, the Republic of Moldova and Ukraine pointed out the aid provided by the Recommendation in the development of their national laws.

Having examined the main important points regarding the necessity of adopting a full and transverse protection towards whistleblowers, there is clearly a lack of commitment from most European countries. The general delay in transposing the Directive, and the poor impact of the Recommendation in non EU countries, reflects an underestimation of the matter, which indeed is crucial for fighting corruption and organised crime. European countries need to ensure that every whistleblower has the

capacity of reporting, so that prosecution can be effectively carried out and ensure that no crime remains hidden.

Nevertheless, it is mandatory to outline the contrast between EU and non EU countries, demonstrating that binding documents based on consensus can act like propulsion forces for an harmonisation of legal aspects, taking international cooperation to a higher level.

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