



BRIEFING PAPER
WHISTLEBLOWER PROTECTION IN THE EU

Whistleblower Protection in France

Introduction

In November 2016, France introduced the long-debated *Loi Sapin II*, which constitutes an extension of the French anticorruption legislation *Loi Sapin* and includes provision on the protection of whistleblowers. Critics, however, claim that the new legislation still contains a range of dangerous loopholes, and in fact even aggravates the situation for French whistleblowers.

Due to a series of high-profile whistleblower cases and growing public acceptance of the issue, several single-purpose whistleblower laws had been passed in recent years.

Laws, Institutions and Procedures

The recently introduced *Loi Sapin II* includes various provisions relating to the protection of whistleblowers. The legislation allows all persons who have knowledge of breaches of the law and other grievances in the public interest to report these, and grants confidentiality. It standardizes the highly fragmented legal framework, specifically legal provisions included in five separate laws adopted between 2007 and 2014. These covered employees in the public and private sectors but only for specific types of disclosures related to grave risks to health or the environment, and matters of corruption.

The new legislation allows employees to disclose a broad range of information, and, as a last resort, offers the option to inform the media. It protects whistleblowers from all kinds of retaliation, and criminalizes retaliation, the violation of a whistleblowers confidentiality or the interference with a public interest disclosure.

The law includes a provision requiring all enterprises with more than 50 employees as well as public institutions to introduce internal whistleblower systems. Whistleblower disclosure systems are subject to prior authorization from the French data protection authority CNIL, since public and private data are processed.

Recent or Ongoing Initiatives and Trends

Immediately after the introduction of the *Loi Sapin II*, critics have raised their concerns towards the new legislation, stating that in practice, the situation for French whistleblowers now is worse than before.

One of the most criticized aspects is the fact that protection is only applicable if the whistleblower acts in good faith. In another shortcoming, the law does not protect disclosures of certain medical, legally privileged, and intelligence and national security information. This could allow corruption and threats within these sectors to persist without adequate means to expose and investigate them.

Whistleblower Cases

France is home to a number of prominent and impactful whistleblower cases.

Among them are financial whistleblowers Hervé Falciani, a former HSBC system engineer responsible for one of the biggest banking leaks in history, and Stéphanie Gibaud, who blew the whistle on alleged money laundering schemes and tax evasion at UBS bank.

Gibaud refused to comply with her manager's instructions to delete the contents of her hard drive after an earlier disclosure by Bradley Birkenfeld led to major investigations against UBS. Instead she blew the whistle on her employer. For this she was harassed, dismissed and made redundant in 2012. She wrote a book about her experiences as a whistleblower, for which she and her publisher received a defamation complaint from UBS France. The same year a French labor court ordered UBS to pay her €30,000 in damages for harassment. She continues to actively work for the rights of whistleblowers.

Other prominent whistleblowers include Antoine Deltour, who initiated the "LuxLeaks" affair, and Irène Frachon, who exposed side effects of the antibiotic drug Mediator which may have led to the deaths of more than 500 people. In the aftermath of Frachon's disclosure, the drug was withdrawn from the market.

Data and Statistics

Because France has no government agency that tracks whistleblower cases, the number of cases filed each year is not known.

Public Perception of Whistleblowing

Whistleblowing in France generally is connoted rather negatively and often thought of as denouncement. In the early 1990s companies began to adopt ethics codes with the aim of improving corporate responsibility and risk management, which helped raise awareness of the issue. Corporate compliance programs that were obligatory in the context of the Sarbanes-Oxley Act, however, provoked a public outcry.

Today, following several prominent cases with positive impacts for French society, the issue has become more recognized, especially in the media.

Capacities and Knowledge Centers

Transparency International is the only organization supporting the rights of whistleblowers to a significant degree in France. There are no local groups involved in the issue.