



BRIEFING PAPER
WHISTLEBLOWER PROTECTION IN THE EU

Whistleblower Protection in Luxembourg

Introduction

Luxembourg is rather a paradox in regard to whistleblower protection. Anti-corruption reforms passed in 2011 provide legal protections for public and company employees who report corruption, influence peddling and other crimes. The measures are considered, on paper, among the strongest in Europe.

Five years after these measures were passed, Luxembourg drew international criticism when the two whistleblowers at the heart of the “LuxLeaks” tax avoidance scandal were convicted for disclosing internal documents.

In general, the country’s small, close-knit community characterized by interconnected political and financial circles has made it difficult for whistleblowers to come forward and have confidence that they will not face career or legal consequences.

Laws, Institutions and Procedures

The main provision designed to protect people who report crime and misconduct from retaliation is the Law on Strengthening the Means to Fight Corruption. Passed in February 2011, the law includes various international standards, including coverage for public and private sector employees, a range of disclosure channels, and the requirement that employers prove any action taken against an employee is not linked to whistleblowing.

Under the law, employees can report corruption, abuse of office and influence peddling to supervisors, prosecutors or regulatory agencies. Aggrieved employees can file unfair dismissal cases in labor courts. The law has several weaknesses, however. It does not protect employees who disclose information to the media or the public, and it does not designate a government agency to enforce the law and support whistleblowers.

To date there is little evidence of how well the law is working in practice and how it has been applied in courts. For its part, the LuxLeaks scandal revealed several major limitations with law. Technically, the actions by government tax authorities and the accounting firm PricewaterhouseCoopers were not illegal. Therefore whistleblowers Antoine Deltour and Raphaël Halet did not qualify from protection from retaliation and criminal prosecution under the law.

Recent or Ongoing Initiatives and Trends

At the time it was passed in 2011, the Law on Strengthening the Means to Fight Corruption was considered an important step in exposing and deterring financial crime in the country. Critical voices now consider it in

need of strengthening. Recent debates fueled by civil society organizations, as well as fallout from the LuxLeaks affair, have raised concerns about the efficiency of current whistleblower laws and policies. No official reform proposals are known to have been introduced.

Whistleblower Cases

Luxembourg is home to one of the largest whistleblower-initiated scandals in recent memory: the so-called LuxLeaks scandal. PricewaterhouseCoopers employees Deltour and Halet released internal documents exposing favorable tax arrangements between government authorities and more than 300 multinational companies based in Luxembourg.

The affair became public in November 2014 when, in cooperation with the International Consortium of Investigative Journalists, newspapers and TV stations in several countries published tens of thousands of internal documents and 548 tax rulings. Decisions by the Luxembourg government gave tax rates of less than 1 percent to major companies including Amazon, Apple, Deutsche Bank, Heinz, IKEA and Pepsi.

Rather than being protected from prosecution, Deltour and Halet were charged with theft, disclosing trade secrets, breach of professional secrecy, money laundering and computer fraud. In June 2016 they were convicted and given suspended prison sentences. Journalist Edouard Perrin, who reported on the scandal, was acquitted. A hearing on Deltour's and Halet's appeal was heard in December 2016.

The European Commission officially condemned such favorable tax arrangements. Deltour received a European Citizens' Prize from the European Parliament in 2015.

Data and Statistics

Because Luxembourg has no government agency that tracks whistleblower cases, the number of cases filed each year and their outcomes are not known.

Public Perception of Whistleblowing

Commonly known as "denunciation" in Luxembourg, whistleblowing is perceived rather negatively among employees as well as the general public. Due to the country's social cohesion, financial and political relations rely largely on close personal relationships. Corruption and other related crimes are rarely discussed in public discourse.

Whistleblowing does not translate easily into any of the three administrative languages of French, Luxembourgish and German. Following the LuxLeaks affair, media coverage of whistleblowing has increased, but its impact on the public opinion remains limited.

Capacities and Knowledge Centers

Luxembourg's Law on Strengthening the Means to Fight Corruption includes a provision allowing civil society organizations to be delegated as recipients of reports on corruption and other crimes. To date, only the Luxembourg office of Transparency International has been designated as a disclosure channel.