

In Amendment 16 for new Recital provision 44b, and Amendment 54 for new Directive Article 13, para. 4a, Rapporteur Virginie Rozière recommends extending the Directive's protection to anonymous whistleblowers who are exposed. **Her recommendation is well-taken and should be supported.** Because the overwhelming majority of whistleblowing reports are through anonymous hotlines, her recommendation is necessary to prevent the Directive from only protecting the tip of whistleblowing, while leaving the iceberg defenseless.

- **Anonymity is irrelevant for the purpose of whistleblower laws.** The reason for whistleblower protection is to safeguard the free flow of information necessary for responsible exercises of authority, and evidence for accountability against illegality or abuses of power. Except for credibility and further dialogue, the source is completely irrelevant. What counts is getting warnings or evidence into the right hands. Removing protection when needed for initially anonymous disclosures would drastically shrink the Directive's capacity to sustain the flow of evidence.
- **Denying protection for anonymous whistleblowers will have a severe chilling effect.** Whistleblowers act anonymously, because they are especially afraid of retaliation due to exposure of their identities. So creating loophole will have a chilling effect on the Directive's largest source of evidence.
- **It is equally unjust to deny protection for anonymous and identified whistleblowers.** Increased fear of reprisal is no justification to leave them defenseless. All that should count is whether the disclosure reflects a reasonable belief of significant misconduct.
- **Anonymous whistleblowing disclosures have an impressive track record.** Anonymous disclosures have produced unsurpassed benefits both for employers and authorities. A 2007 PricewaterhouseCooper global crime survey of 5400 multi-national corporations found that 80% reported significant internal fraud averaging \$3.2 million. However, anonymous internal hotline disclosures successfully detected 43% of the fraud, more than audit departments, compliance departments and law enforcement combined.¹ A 2008 survey by the Association of Certified Fraud Auditors produced identical results.² The U.S. Dodd Frank law created a Securities and Exchange Commission (SEC) whistleblower office to handle reports that nearly always are anonymous. In its 2017 Annual Report to Congress, the SEC reported that they led to recovery of \$975 million in fines, including \$675 million in disgorgement of illegal profits to investors.³
- **Predicted abuses from anonymous reporting have flunked the reality test.** Since 2002, under the Sarbanes Oxley law, every publicly-traded U.S. corporation must have an anonymous whistleblower hotline to its Board of Directors Audit Committee. While the law has been controversial, there have been no visible complaints about the anonymous hotlines, which is understandable since they are invaluable against internal fraud. Similarly, companies successfully have targeted Dodd Frank provisions

¹ See https://www.whistleblowers.org/storage/documents/pwc_survey.pdf.

² See http://www.acfe.com/uploadedfiles/acfe_website/content/documents/2008-rttn.pdf.

³ See <https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf>.

that created an undue burden. While Dodd Frank's core provisions have been weakened and there have been aggressive attacks against its whistleblower bounty provisions, there have not been any attacks or modification of its strict provisions to protect anonymous disclosures.

- **Denying protection for anonymous whistleblowers would be unprecedented.** 43 nations and seven Intergovernmental Organizations have national whistleblower laws or policies. Not one cancels protection if needed for anonymous disclosures.
- **Limitations from anonymous disclosures can be easily overcome.** The primary traditional weakness of anonymous disclosures is the lack of capacity for follow-up communications. While tips are valuable per se, they often need more context or raise questions that require answers for the evidence to achieve its potential impact. Relevant technological breakthroughs, however, allow sustained anonymous dialogues through identification codes. Alternatively, the SEC whistleblower office requires anonymous whistleblowers to have associated counsel as liaison for further dialogue.

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