



Whistleblower-Netzwerk's Open Letter to Federal Minister of Economic Affairs Peter Altmaier

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Dear Minister Altmaier,

Particularly because we are aware of the fact that you have to urgently deal with challenges of the Covid-19 pandemic and find solutions to this crisis over the coming weeks, we address this open letter to you, and at the same time to the public.

We write regarding the transposition of the Directive on whistleblower protection (herein the Directive), currently being coordinated in Germany. As you are aware, the Directive which is binding on all EU Member States, requires that whistleblowers must be protected if they report certain violations of EU law. The relevant EU legal acts are listed in detail in a lengthy appendix to the Directive. It is left open to the Member States to extend this narrow scope to include violations of their respective national laws.

Contrary to the advice of the Ministry of Justice, your office is **reportedly planning to implement the Directive '1:1' - that is, word-for-word, including any restrictions and limitations therein. We would like to urgently warn you against this approach.**

Of course, an EU Directive can only refer to EU Law - i.e. an area in which the EU has regulatory competency. However, the European Parliament when adopting this Directive made very clear that its goal was to protect whistleblowers throughout the EU as much as possible. The Directive explicitly advises Member States to consider including breaches of national law into the scope of protections during transposition. It will contradict the spirit of the Directive, as to be in direct opposition to its very tenet, if the resulting German law were to create less, rather than more, legal certainty and clarity on the protection of whistleblowers.

This is precisely what will happen if, instead of introducing a uniform and comprehensive law, current patchwork regulations already in existence in Germany were to be expanded by a series of new individual provisions. The consequence would be that each individual whistleblower would have to decipher for himself, using only his common sense, which infringements he should report, and which he should not. Perhaps a potential whistleblower may seek legal advice to help him decide, but it is more likely that he would look away and remain silent.

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Is this what we want? Is this what our democratic society, based on transparency, freedom of expression and information deserves? Is that what a free press needs? Is that what you want Minister?

On the basis of our many years of experience with whistleblowing cases, we are convinced that a 1:1 transposition of the Directive would not only be detrimental to the public interest, but also contrary to the commercial interests of our enterprise. This is because it would, first and foremost, deprive them of the opportunity to react quickly and take remedial action on reports of maladministration, and instead face the risk of a damage to reputation and liability for legal damages or penalties.

So what is at stake now given the current coronavirus pandemic? Both in Germany, and across the world, false reports, illegal activity and misconduct are on the rise across all areas of society - from scientific research and the manufacture of medicine, the quality of care of our elderly and unwell, to the manipulation in the financial sector and much more. A coalition of over one hundred European NGOs is already collecting evidence of serious wrongdoing, and has **appealed to politicians and the judiciary to protect whistleblowers, particularly during this global emergency. It has been proven that very often such abuses can only be detected and reported by insiders, by whistleblowers. That is why protecting whistleblowing disclosures is, currently more than ever, in the public interest!**

Against this background, the current initiative of your office, to hinder rather than promote whistleblower protection, with yet more unclear legislation, is simply incomprehensible. We ask you Minister Altmaier, to reconsider your approach, and consider our own **expert analysis on the transposition of the Directive.**

Sincerely yours,

Annegret Falter
(Chair of the Board)

Wolfgang Nešković
(Chair of the Advisory Board)