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We can't hear you

A new online tool to help employees expose corruption still leaves whistleblowers vulnerable

On 16 March, the European Commission introduced a new online tool to help whistle-blowers.

The anonymous tool is essentially an encrypted messaging system run by an external service provider that acts as an intermediary. Only the content of the messages is forwarded to the Commission without any metadata that could identify the whistle-blower. It's such a simple idea, one wonders why it took them so long to come up with it.

But "whistle-blowers" are suddenly a hot topic for the EU. Never mind the fact that whistleblowing – reporting illegal practice to a higher authority – has been around for decades. Woodward and Bernstein relied on "Deep Throat" in breaking the Watergate scandal in 1972. What has changed, however is the way in which whistle-blowers can protect themselves, and the ways they can be attacked.

When Chelsea Manning disclosed around 700,000 classified military documents in 2010, it was via Wikileaks. When the most famous whistle-blower of recent years, Edward Snowden, decided to make his disclosures, he spent a lot of time teaching the journalists he spoke to about encryption.

Since last year, he has been president of San Francisco–based non-profit organisation, Freedom of the Press Foundation, which tries to help journalists protect themselves and protect their sources... including using "crypto".

Risks of exposure

Despite the Commission's new tool, whistle-blowers face huge risks in coming forward, from losing their job and being blacklisted from their industry, to jailtime. Yet they are essential in holding the powerful to account in both public and private bodies. The Commission's initiative is focussed on anti-competitive business practices: including price-fixing

cartels, keeping products off the market or unfairly excluding rivals.

"If people are concerned by business practices that they think are wrong, they can help put things right," said the EU's Competition Commissioner Margrethe Vestager.

"Inside knowledge can be a powerful tool to help the Commission uncover cartels and other anti-competitive practices. Information can contribute to the success of our investigations… to the benefit of consumers and the EU's economy as a whole."

That will be scant consolation to Antoine Deltour or Raphael Halet, the former PricewaterhouseCoopers employees who disclosed the so-called LuxLeaks scandal. Both received convictions from Luxembourg's court of appeal on 15 March. Although the court recognised their status as whistle-blowers—and gave reduced sentences from the initial verdict—it nonetheless found them guilty of theft of tax rulings and computer fraud.

Edouard Perrin, a reporter who worked on the Panama Papers as well as LuxLeaks also faced charges. Speaking truth to power is a dangerous business. And last year it was made even more perilous by the EU's controversial Trade Secrets Directive, a ruling that "resembling a blanket right to corporate secrecy" that "threatens anyone in society who sometimes needs access to companies' internal information without their consent: consumers, employees, journalists, scientists," according to the Brussels-based Corporate Europe Observatory (CEO).

Feeling the chill

The Trade Secrets Directive was intended to harmonise EU-wide legislation protecting companies against theft or publication of their intellectual property, customer lists, planned innovations or market strategies. Instead it has had a chilling effect on disclosing corruption. Many in the European Parliament were against it, in particular the Greens group.

Nessa Childers, the only social-democrat MEP to oppose the directive, said it "fails to protect insiders who stand to lose their careers and face harassment and persecution when they blow the whistle on corrupt and unethical behaviour".

As a sweetener, the Commission promised, alongside the Trade Secrets Directive, to look into rules to protect whistle-blowers, whether acting to expose the state or commercial entities.

The general principle is that whistle-blowers must act in the public interest. What defines the public interest is a grey area, but draconian laws like the UK's proposed new "Espionage Act" swing the balance of power too far against whistle-blowers.

Under the plans to overhaul to the country's secrecy laws, whistle-blowers who leak sensitive government information and journalists who report it could face jail time. The Law Commission, which is conducting a public consultation on the plan, has been so inundated with concerns, it has extended the review by a month—the deadline is now 3 May.

On a European level, the Commission is also delivering on its promise by holding a similar consultation. The deadline for submissions is 29 May.

"Whistle-blowers do not belong in court"

Meanwhile in the European Parliament, the Committee on Legal Affairs (JURI) has an own-initiative procedure regarding "legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies" that recognises the importance of whistle-blowers as effective in protecting democracy.

According to Green MEP Sven Giegold, scandals like LuxLeaks or the Panama Papers show how important it is to protect those who dare publicise scandals that harm society.

"The fate of people who make scandals public cannot be dependent on the legal situation in the individual EU Member States. Whistle-blowers do not belong in court," he said. Giegold, and others like him, know that in our so-called "post-truth" era, standing up for what is right in the face of opposition is more important than ever.

Issues such as public health, public finance, violations of human rights, corruption, fraud, discrimination, conflicts of interest and public safety, all deserve protection and should not be at the expense of a company's desire to make money or a government's wish to control the populace. Furthermore, whistle-blowers should not bear the burden of proof: those who disclosure inaccurate information in honest error should still be protected.

Right now most whistle-blowers suffer a great deal as a result of their disclosures: on a micro level those reporting bad behaviour within their companies may face dismissal, demotion or denial of promotion. On a national scale, they may lose their freedom and their homes. Not everyone has the stamina and fortitude to go on the run à la Edward

Snowden, which is why we need robust laws to protect those who are trying to protect all of us.



Jennifer Baker
Brussels

Jennifer Baker has been a journalist in print, radio, and television for nearly 20 years, the last eight specialising in EU policy and legislation especially in the tech/digital sector. Her aim is to translate EU policy-speak and tech jargon into understandable English. She likes good books and bad films.