



Protecting Whistleblowers in Malta

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A CIVIL SOCIETY MOVEMENT

Protection of the Whistleblower Act

- Chapter 527 of the Laws of Malta introduced in 2013



Why do we need changes?

- Because the law does not work
- Only practical use was State's case against Anthony Debono
- Dysfunctional in cases like Maria Efimova and Jonathan Ferris
- Chilling effect on other potential whistle-blowers
- Ombudsman is paralysed because of conflicting powers
- This is an important tool to fight corruption: which cannot be used

Dangerous engine

- “While the legislation is sophisticated, it is like a train with all the bells and whistles but a defective, dangerous engine.” (WIN/Repubblica)
 - Four fundamental conceptual flaws:
 - Law only protects whistleblowers who follow formal procedure. If we want the iceberg we must protect all whistleblowers.
 - No structural independence guarantees of whistle-blower units (which is why the few witnesses who came forward were discredited).
 - Employer is favoured over whistleblower in allocation of burden of proof. Employer allowed to retaliate against witness.
 - Transparency rules ignored. Law adopted without people knowing is unlikely to work.

Malta: Scoresheet

Best practice criteria	Score
1 Comprehensive horizontal rights harmonized to include the same standards for breaches of EU Directive and national laws.	Substantial compliance
2 Broad whistleblowing disclosure rights with no loopholes.	Noncompliance
3 Wide subject matter scope within EU competencies.	Substantial compliance
4 Protection for those associated with or assisting the whistleblower.	Substantial compliance
5 Protection for non-employees who report work-related information.	Partial compliance
6 Reliable identity protection.	Substantial compliance
7 Protection against full scope of harassment.	Substantial compliance
8 Shielding whistleblower rights from gag orders.	Substantial compliance
9 Right to a genuine day in court.	Substantial compliance
10 'Merits test' to qualify for protection.	Partial compliance
11 Realistic standards to prove violations of rights.	Noncompliance
12 'Make whole' compensation.	Substantial compliance
13 Interim relief.	Substantial compliance
14 Coverage for legal fees and costs.	Noncompliance
15 Personal accountability for reprisals.	Substantial compliance
16 Institutional whistleblower channels.	Partial compliance
17 Whistleblower enfranchisement.	Substantial compliance
18 Education and outreach.	Substantial compliance
19 Transparency.	Noncompliance
20 Review.	Noncompliance

Compliance Score: 13.5/20

Partial Compliance

- Scope of coverage: The PWA covers laws falling within EU authority, but does not cover national security disclosures, as it is excluded from EU competence
- Protection for non-employees (suppliers or contractors) who report work-related information
- 'Merits test' to qualify for protection
- Requirement for the installation of institutional whistle-blower channels

Noncompliance

Broad whistle-blowing disclosure rights with no loopholes

- The law does not protect workers blowing the whistle as part of their professional responsibilities.
- There is no protection for internal disclosures which forces whistle-blowers to bypass normal authority channels controlled by the government.

Noncompliance

Realistic standards to prove violation of rights

- We argue that the burden of proof must be reversed such that once a prima facie case is set out by a whistle-blower, the evidentiary burden shifts to the employer to show that any action taken was independently fair and unrelated to the disclosure.
- The law, as it stands, enables employers to justify retaliation against whistle-blowers, thus denying whistle-blowers protection of the law.

Noncompliance

Coverage for legal fees and costs

- A prerequisite for viable rights is legal aid to pursue claims, or reimbursement of attorney fees and litigation costs for whistle-blowers who substantially prevail. Otherwise, they could not afford to assert their rights.
- Remedies should include legal fees.

Noncompliance

Transparency

- The Directive's requirement to create transparency through annual reports has been excluded.
- Transparency is the most effective resource to meet the difficult challenge for whistle-blowers to overcome ingrained bias and receive societal solidarity through cultural acceptance.

Recommendations

- Amendments with proper safeguards to protect whistle-blowers and witnesses
- An independent and well-resourced whistle-blowing agency (part of the Network of European Integrity and Whistleblowing Authorities)
- Best practice template (EU Directive + Council of Europe recommendations + ECtHR decisions under Article 10)
- Reporting incentives to recruit citizens to fight corruption

Our plea

- Proper consultation for proper reform
- A culture to empower whistle-blowers rather than intimidate them
- Independence of whistle-blower offices
- Discussion as part of a wider effort to protect journalism and increase transparency to secure the rule of law

Thanks to our partners



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