



*37<sup>th</sup> Meeting of the Committee of Experts of the MESICIC*

*Panel discussion on international  
anticorruption mechanisms and whistleblower protections*

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# **OECD 2021 Anti-Bribery Recommendation: Towards Comprehensive Protection for Public and Private Sector Whistleblowers**

*France Chain, Senior Legal Analyst, OECD Anti-Corruption Division*

The views expressed in this presentation do not necessarily represent those of the OECD  
or of the States Parties to the OECD Anti-Bribery Convention.



## Addressing whistleblower protection: an OECD priority

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- 2009 Anti-Bribery Recommendation
- 2016 OECD Anti-Bribery Ministerial
- OECD (2017) *The Detection of Foreign Bribery*, Chapter 2 on Whistleblower and whistleblower protection:
  - In English: [www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf](http://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf)
  - In Spanish: [www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ESP.pdf](http://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ESP.pdf)
- **2021 Anti-Bribery Recommendation**, *Section XXII – Protection of Reporting Persons*:  
[www.oecd.org/daf/anti-bribery/2021-oecd-anti-bribery-recommendation.htm](http://www.oecd.org/daf/anti-bribery/2021-oecd-anti-bribery-recommendation.htm)



# Protection of reporting persons – Section XXII



- **Broad definition of whistleblower**

- *No “good faith” requirement*

- *“persons working in the private or public sector” [Chapeau]*

- *Anyone reporting in a work-related context, including pre and post-employment:*

*“in a work-related context, including as appropriate to those whose work-based relationship has ended, to persons who acquire information on suspected acts of foreign bribery during advanced stages of the recruitment process or the contractual negotiations, and who could suffer retaliation, for instance in the form of negative employment references or blacklisting,” [ii]*

- *“third persons connected to the reporting person” [ii]*

- **Broad protection**

- **Confidentiality**, if possible **anonymity**

- “confidentiality of the identity of the reporting person and the content of the report” [iii]*

- “consider allowing for anonymous reports” [iv]*

- **Prohibition of waivers**

*“prohibit or render invalid any contractual provisions designed or intended to waive, terminate, diminish, or modify the claims and legal protections [of reporting persons]” [v]*

- **No disciplinary proceedings** for reporting persons:

*“reporting persons are not subject to disciplinary proceedings and liability based on the making of reports” [x]*



## Protection of reporting persons – Section XXII

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- **Broad definition of retaliation**

*“not limited to workplace retaliation and can also include actions that can result in reputational, professional, financial, social, psychological, and physical harm” [vi]*

- **Appropriate remedies**

*“to compensate **direct and indirect consequences** of retaliatory action following a report that qualifies for protection, including financial compensation, and **interim relief**” [vii]*

- **Sanctions** against those who retaliate

- *“effective, proportionate and dissuasive sanctions” [viii]*

- ***Shift of burden of proof***

*“in administrative, civil, or labour proceedings, shift the burden of proof on retaliating natural and legal persons and entities to prove that such allegedly adverse action against a reporting person was not in retaliation for the report” [ix]*

- **Data protection rules should not impede reports by and protection of whistleblowers [xiv]**



## Protection of reporting persons – Section XXII

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- **Effective institutional framework**

- **Competent authorities** to receive reports + to investigate complaints

- “**sufficiently-resourced and well-trained competent authorities implement the legal framework for the protection of reporting persons, and receive, investigate or otherwise process complaints of retaliation**” [i]

- **Awareness and training**

- “**raise awareness and provide training on the design and implementation of the legal and institutional frameworks to protect reporting persons and protections and remedies available**” [xii]

- **Periodic reviews**

- “**periodically review the effectiveness of the legal and institutional frameworks for the protection of reporting persons and consider making publicly available the results of these periodical reviews**” [xiii]



# To Find Out More



[www.oecd.org/daf/anti-bribery/2021-oecd-anti-bribery-recommendation.htm](http://www.oecd.org/daf/anti-bribery/2021-oecd-anti-bribery-recommendation.htm)  
[france.chain@oecd.org](mailto:france.chain@oecd.org)