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PROTECTIONS FROM ACROSS THE POND: THE EUROPEAN UNION'S NEW WHISTLEBLOWING LAW & U.S. LAW COUNTERPARTS

JENNIFER M. PACELLA*

Whistleblowing spans internationally. All over the world, wrongdoing is discovered by would-be whistleblowers who make the courageous decision to report. Laws and businesses globally are increasingly recognizing the enormous value that whistleblowers bring to organizations. Currently, the various nations of the European Union are experiencing all of these developments as they implement the comprehensive provisions of the landmark Resolution and Recommendation on the Protection of Whistleblowers of 2019 ("EU Whistleblowing Directive"), for which transposition into national law was required by 2023. Meanwhile, in the United States, whistleblowing law remains stagnant in its industry-specific, piecemeal structure. On both sides of the pond, however, retaliation and negative views of whistleblowers tend to dominate and are influenced by respective cultural considerations and perceptions. In Europe, histories marked by former totalitarian governmental regimes are likely to influence these perceptions. In many nations, the linguistic absence of the very word and concept "whistleblower," or a translatable substitute, makes it challenging even to grasp the very essence of the meaning of whistleblowing. This Article offers a comparative analysis of the differences between the novel EU Whistleblowing Directive and U.S. whistleblowing law, examining both the law and culture of both continents and proposing amendments to bring U.S. law up to par with the more expansive protections of EU law. In addition, this Article proposes the creation of a novel transatlantic whistleblowing alliance to strengthen U.S. whistleblowing law, to ensure that the European Union successfully transitions to the conforming legal landscape now greatly

* Associate Professor of Business Law and Ethics, Indiana University, Kelley School of Business.

protecting whistleblowers, and to overcome the societal hurdles and historical remnants that tend to influence overall perceptions of whistleblowers on both sides of the Atlantic.

INTRODUCTION

Whistleblowing occurs across the globe. In all corners of the world, there have been individuals in possession of information about illegality, wrongdoing, or unethical behavior who have either decided to come forward with that information or have suffered through the difficult decision of deciding whether to do so at all.[1] While it is most often local law, culture, and situation specifics that are likely to determine the results of a whistleblower's decision, retaliation against whistleblowers, no matter the location, is an extremely common occurrence.[2] The results of that retaliation may even be deadly.

In Siena, Italy, a beautiful, charming, and extremely well-preserved medieval city in Tuscany, a corporate scandal at the Monte dei Paschi bank ("MPS"), the oldest financial

1. *See Our Work*, WHISTLEBLOWING INT'L NETWORK, whistleblowingnetwork.org/Our-Work (last visited June 16, 2025) (discussing the worldwide occurrence of and need to support whistleblowing).

2. *See Whistleblower Laws Around the World*, NAT'L WHISTLEBLOWER CTR., www.whistleblowers.org/whistleblower-laws-around-the-world/ (last visited June 16, 2025) (analyzing the differences in whistleblowing law across the world).

institution in the world, brought immense tragedy and confusion when David Rossi, the former head of communications for MPS, was found dead on the street outside MPS's building on March 6, 2013, after having fallen to his death from a third-floor window.[3] Rossi's death happened in the midst of MPS's massive fraud scandal that almost caused the bank's collapse after more than 500 years of existence and led it to ask for a nearly 4 billion euro bailout.[4] While the reason for his death, whether suicide or murder, still shockingly remains unresolved, what is known is that Rossi was not under investigation himself for the scandal but possessed incriminating information that he intended to share with the authorities.[5] Rossi's plans to share this information were thwarted in the most tragic manner imaginable before he had a chance to do so, thereby demonstrating the kinds of horrors that would-be whistleblowers and actual whistleblowers commonly face.

Yet whistleblowers' value is undeniable. They help detect fraud, illegality, and other wrongdoing from a position often unreachable by the government. Whistleblower reports have led to the uncovering of some of the most significant cases of corruption and unlawful behavior in recent decades.[6] Accordingly, the recognition that whistleblowers should be worthy of the utmost legal protections from retaliation became part of international law in 2003 through the adoption of the Convention Against Corruption by the United Nations (the "Convention").

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3. *See Italy's MPS Bank's David Rossi Found Dead in Siena*, BBC NEWS (Mar. 7, 2013), www.bbc.com/news/world-europe-21697412.

4. Lizzy Davies, *Italy Rocked by Scandal at World's Oldest Bank,* THE GUARDIAN (Feb. 1, 2013), www.theguardian.com/business/2013/feb/01/mps-bank-siena-scandal.

5. *Monte Paschi Shares Halted; Spokesman Found Dead*, CNBC (Mar. 7, 2013), www.cnbc.com/2013/03/07/monte-paschi-shares-halted-spokesman-found- dead.html; Marco Gasperetti, *Former Mayor of Siena Casts Doubt on David Rossi's "Suicide,"* CORRIERE DELLA SERA (Oct. 11, 2017), www.corriere.it/english/17_ottobre_11/former-mayor-of-siena-casts-doubt-on-david-rossi-s-suicide-69b635ba-ae9e-11e7-b0c4-b8561c2586e6.shtml.

6. *See* Jarod S. Gonzalez, *SOX, Statutory Interpretation, and the Seventh Amendment: Sarbanes-Oxley Act Whistleblower Claims and Jury Trials*, 9 U. PA. J. LAB. EMP. L. 25, 25–26 (2006) (explaining the contributions of whistleblowers in uncovering major corporate scandals in recent decades); *see also Whistleblower Stories: 12 Inspiring Individuals Who Safeguarded Public Interest By Exposing Misconduct*, TRANSPARENCY INT'L: BLOG (June 23, 2023), www.transparency.org/en/blog/whistleblower-stories-individuals-safeguarded-public-interest-exposing-misconduct (highlighting the various misconduct exposed by whistle blowers).

192 nations across the globe formally accepted, including the United States and all member states of the European Union ("EU Member States").[7] Referring to whistleblowers as "reporting persons," the Convention acknowledges the invaluable contributions of whistleblowers for the facilitation of five main areas of focus: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.[8] Recognizing that whistleblowers often raise information about these areas of focus, the Convention urges each signatory to incorporate into national law provisions for protecting whistleblowers when they have reported, in good faith, information concerning violations of the principles outlined in the Convention.[9]

In the years that followed the Convention, both the United States and the European Union have made notable advances in whistleblowing law. For instance, in 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") was enacted in the United States, providing one of the most comprehensive federal whistleblowing programs to date, including bounty provisions that financially reward whistleblowers for their information as an incentive to reporting.[10] Across the Atlantic, the European Union adopted the landmark and game-changing EU Whistleblowing Directive, a novel mandate requiring each EU country by 2023 to institute a comprehensive system of retaliation protections for public and private whistleblowers, safe mechanisms for reporting violations, and methods to properly receive and investigate the information that whistleblowers provide.[11] The implementation of the EU Whistleblowing Directive across European nations, many of which had no prior form of whistleblowing legislation and not even a translatable term for the very word

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7. *Signature and Ratification Status*, UNITED NATIONS: OFF. ON DRUGS & CRIMES, www.unodc.org/unodc/en/corruption/ratification-status.html (last visited May 1, 2025); *see also Whistleblower Laws Around the World*, *supra* note 2.

8. United Nations Convention Against Corruption, art. 33, Oct. 31, 2003, 2349 U.N.T.S. 41; *see also* United Nations Convention Against Corruption, *supra*, arts. 11, 13.

9. *Id.* art. 33.

10. 15 U.S.C. § 78u-6(b).

11. Council Directive 2019/1937, arts. 8, 26, 2019 O.J. (L 305) (EU) [hereinafter EU Whistleblowing Directive]. The original deadline for transposition of the EU Whistleblowing Directive was 2021 but was later extended to 2023.

"whistleblowing," has involved various hurdles.[12] Despite the challenges that EU Member States are expected to face while adopting new laws to meet the new requirements, the EU Whistleblowing Directive is much more comprehensive, in many ways, than the current whistleblowing law in the United States.

This Article explores in detail the EU Whistleblowing Directive as a point of comparison to that of U.S. law and how the former appears more amenable to managing all the various realities and consequences that emerge when someone makes the courageous and difficult decision to blow the whistle.[13] In this Article's comparative analysis of U.S. and EU whistleblowing law, focus will be on the industries in the United States with the largest whistleblowing coverage, specifically the corporate, financial, and securities sectors, as well as fraud and wrongdoing committed against the U.S. government. Part I will examine the normative value of whistleblowers and the makeup of the whistleblowing legislation in the United States and in the European Union, in particular, focusing on the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), the Dodd-Frank Act, the False Claims Act, the Internal Revenue Service ("IRS")'s tax whistleblowing program, and the Whistleblower Protection Act.[14] This section will also analyze the history and development of the EU Whistleblowing Directive, its components and key provisions, and its expected timeline for full implementation in EU Member States.[15] Part II will then undergo an extensive comparative analysis between the United States and European whistleblowing laws and will highlight the various areas in which the EU Whistleblowing Directive appears to extend beyond U.S.

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12. *See EU Member States Need to Enhance Their Whistleblower Protection Laws*, Transparency Int'l: News (Dec. 15, 2023), www.transparency.org/en/news/eu-member-states-need-to-enhance-their-whistleblower-protection-laws (discussing the ways in which certain EU Member States have fallen short of adopting the EU Whistleblowing Directive into their respective national law); *see also* Valentina M. Donini, *La Tutela Del Whisteblower tra Resistenze Culturali e Critcità Legislative*, Penale (Jan. 24, 2022), www.penaledp.it/la-tutela-del-whistleblower-tra-resistenze-culturali-e-criticita-legislative/.

13. *See* Justin W. Evans et. al., *Reforming Dodd-Frank from the Whistleblower's Vantage*, 58 AM. BUS. L.J. 453, 455 (2021) (noting the numerous "stories of hardship and ruin for whistleblowers"); Frank J. Cavico, *Private Sector Whistleblowing and the Employment-at- Will Doctrine: A Comparative Legal, Ethical, and Pragmatic Analysis*, 45 S. TEX. L. REV. 543, 545 (2004) (examining the difficulties involved when someone decides to become a whistleblower).

14. *See infra* Part I.A and I.B.

15. *See infra* Part I.C.

whistleblowing law. These areas largely pertain to the methods of reporting that are protected, whether whistleblowers may lawfully utilize internal company documents as part of their reporting, the type of whistleblowing that is protected, and cultural considerations that influence the potential success of whistleblowing legislation within organizations and more generally in society.[16]

In Part III, this Article will then propose amendments to whistleblowing legislation in the United States to improve upon its most notable areas of weakness, with the hope of bringing U.S. law up to par with the numerous whistleblower-friendly aspects of the EU Whistleblowing Directive.[17] As a means to help enforce and strengthen whistleblowing law, this Article will also propose the creation of a novel transatlantic whistleblowing alliance between the European Union and the United States. Such an endeavor would help to achieve the goal of better aligning international interests and communications pertaining to whistleblower protections, sharing resources and knowledge, and collaborating on ways to improve the domestic culture surrounding whistleblowing in both continents.[18]

I.
Overview of United States & European Union Laws on Whistleblowing

A. *Normative Value of Whistleblowers*

Whistleblowers bring enormous value to organizations and to society and should be protected accordingly. There are numerous organizational benefits to internal whistleblowing especially, which include avoiding negative press that could occur from problems that have escalated; thwarting potential litigation and losses stemming from the wrongdoing were it to proceed; the ability to remediate wrongdoing in a timely and efficient manner; and a sense of heightened ethics and healthy corporate culture from transparency and the freedom to report concerns internally.[19] The organizational benefits of whistle blowing are especially pronounced when there is internal

16. *See infra* Part II.
17. *See infra* Part III.A.
18. *See infra* Part III.B.
19. Jennifer M. Pacella, *The Cybersecurity Threat: Compliance and the Role of Whistleblowers*, 11 BROOK. J. CORP. FIN. & COM. L. 39, 45–46 (2016).

whistleblowing within the organization, rather than external whistleblowing that would be reported externally to the government or media.[20] Whistleblowers are "efficient and inexpensive sources of feedback about organizational mistakes" and often bypass certain obstacles to communication that commonly exist in large organizations to transmit the information to those who have the power and resources to address it.[21]

Studies in social psychology demonstrate that most employees first report wrongdoing internally and only decide to report externally when they have been retaliated against or were ignored following the internal report.[22] Employees are more likely to whistleblow if they believe that their disclosure will successfully address the problem being revealed.[23] Studies also show that whistleblowing is more likely when "the subject perceives disclosure as role-prescribed"—in that way, clear, known, and accessible internal reporting channels and procedures promote whistleblowing, as well as the effective handling of reports.[24] Thus, the presence of both whistleblowing law and internal reporting policies that protect whistleblowers from retaliation, while also being reliable and effective, also helps to promote the discovery of wrongdoing through whistleblowing.

In addition to the various organizational benefits, whistleblowers also play an important public policy role that justifies their need for protection. The voluntary disclosure of illegal and unethical activity has inherent benefits for the public interest. This is because society, unsurprisingly, generally favors the exposure of such activity that could either help an organization internally or address an issue affecting society generally by allowing businesses and the government to cooperate with those who possess such knowledge.[25] U.S. law has well-established that the public policy interest in whistleblowing outweighs the interests

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20. *See id.* (discussing the benefits of internal whistleblowing).

21. Norman D. Bishara, Elletta Sangrey Callahan & Terry Morehead Dworkin, *The Mouth of Truth*, 10 N.Y.U.J.L. & Bus. 37, 40 (2013).

22. *Id.* at 88.

23. *Id.* (noting that "[t]his is a manifestation of self-efficacy; individuals are more likely to engage in an activity if they feel they can perform it successfully. High self- efficacy, in the context of whistleblowing, is associated with perceiving that reporting is a simple matter and that the conduct reported will be addressed if reported.").

24. *Id.* at 88–89.

25. Jeffrey R. Boles, Leora F. Eisenstadt & Jennifer M. Pacella, *Whistleblowing in the Compliance Era*, 55 GA. L. REV. 147, 209–14 (2020).

of enforcing a non-disclosure agreement that the whistleblower may have signed.[26] Therefore, it is illegal for an employer to retaliate against a whistleblower who reveals wrongdoing, even in instances in which they are bound to a confidentiality agreement, because the information that is being disclosed has benefits that far exceed the interests of enforcing the agreement. Credible promises not to retaliate against whistleblowers result in more effective internal compliance programs, more efficient government oversight, and prompt reporting of concerns within the organization that typically lead to earlier and less adversarial resolutions of wrongdoing.[27]

As stated earlier, it is largely the culture and legal landscape of a specific geographic area that shapes the willingness of whistleblowers to come forward and the consequences they face for doing so. However, the nature of the employment relationship also plays a role. While employment contracts are common in Europe, the prevalence of at-will employment in the United States makes it more likely that workers will hold many jobs over their career rather than one until retirement. With lower job security, whistleblowing might be more prevalent in the United States where workers have less to lose and may avoid stigmas around finding another job.[28]

However, when whistleblowing occurs in any location across the globe, it is very common for employers and many in society not to view whistleblowers in a positive light. The historical concept of whistleblowing worldwide, including in the United States, has tended to be associated with negative images and connotations like "traitor," "disloyal," and "rat" and is unfortunately still how many people view whistleblowers.[29]

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26. *See* RESTATEMENT (SECOND) OF CONTRACTS § 178(1) (AM. L. INST. 1981).

27. Boles, Eisenstadt & Pacella, *supra* note 25, at 204–05.

28. *See* Christian Uhlmann, *The Americanization of Whistleblowing? A Legal-Economic Comparison of Whistleblowing Regulation in the U.S. and Germany Against the Backdrop of the New EU Whistleblowing Directive*, 27 U.C. DAVIS J. INT'L. L. & POLICY 149, 186 (2021) (discussing the various ways in which the German employment culture and law differs from that of the United States, thereby affecting the likelihood of whistleblowing).

29. Jan Heuer, *Cultural Attitudes to Whistleblowing: Germany*, IUS LABORIS, (Jan. 4, 2023, at 5:00 PM), iuslaboris.com/insights/cultural-attitudes-to-whistleblowing-germany/. *See also* Matt A. Vega, *Beyond Incentives: Making Corporate Whistleblowing Moral in the New Era of Dodd-Frank Act "Bounty Hunting"*, 45 CONN. L. REV. 483, 491–92 (2012) (discussing the negative impressions that commonly exist within the United States of whistleblowers).

It is fascinating to consider how societal perceptions and understanding of whistleblowers may be affected in countries throughout Europe with histories of totalitarian governments that lived through periods of communism, fascism, and Nazism.[30] "[I]nformers" in totalitarian societies often betrayed fellow citizens by reporting them to the authorities and were thus known to be "the citizens' nemesis."[31] Citizens who were critical or skeptical of these regimes were often denounced by neighbors, friends, or even family members, and turned into authorities, all with the intent of eliminating opposition to the dictatorship so that it could persevere without opposition and because generalized fear would perpetuate this notion.[32] For decades, would-be whistleblowers throughout Europe were intimidated into remaining silent amidst governments ruled by dictators, where silencing the population was a defining characteristic of such governmental structures.[33]

As a result, the historical stigma of whistleblowing throughout years of totalitarian regimes, especially during World War II, persisted for many years, having the effect of either preventing would-be whistleblowers from speaking out or leaving whistleblowers who had reported with dire, negative consequences.[34] Over the last several years, however, the historically negative perceptions of whistleblowers have shifted within Europe, as is evident through the development of the EU Whistleblowing Directive.[35] Its provisions are far-reaching,

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30. *Id.*; *see also* Uhlmann, *supra* note 28, at 180 (discussing how the history of Nazism in Germany has negatively impacted the perception of whistleblowers, as "whistleblowing tends to be perceived as denunciation and, is therefore associated with a negative connotation").

31. Pieter Omtzigt, Rapporteur, Parliamentary Assembly of the Council of Eur., Address at the Council of Europe Parliamentary Assembly (Sept. 14, 2009) (transcript available on Europe Parliamentary Assembly website).

32. Heuer, *supra* note 29.

33. *See* Thomas C.R. Reynolds, *Securing Protections for Whistleblowers of Securities Fraud in the United States and the European Union*, 13 CHI.-KENT J. INT'L. & COMP. L. 201, 218 (2013) (discussing how whistleblowing in Europe is influenced by its history and the dictatorships that have plagued certain countries); *see also* Donald C. Dowling, Jr., *Global Whistleblower Hotline Toolkit: How to Launch and Operate a Legally-Compliant International Workplace Report Channel*, 45 INT'L LAW. 903, 904 (2011) (noting that parts of Continental Europe are in resistance to anonymous whistleblowing channels, including whistleblower hotlines).

34. Matt Kelly, *The EU Whistleblowing Directive: Finding the Right Solution*, GAN INTEGRITY: BLOG (Jan. 4, 2021), www.ganintegrity.com/blog/eu-whistleblower- directive/.

35. Heuer, *supra* note 29.

comprehensive, and generous when it comes to protecting whistleblowers.[36] It remains to be seen how the provisions of the EU Whistleblowing Directive will be enforced over time. However, on paper, its provisions are comparatively more expansive than U.S. whistleblowing law, which is plagued by a piecemeal and fragmented approach that varies by industry.

B. *The U.S. Law Landscape*

While vast, the landscape of whistleblowing laws in the United States is a patchwork of legislation that differs depending on the industry of the whistleblower and generally lacks uniformity of protections across sectors, geographic areas, and types of reporting.[37] Thus, aggrieved whistleblowers must pinpoint the relevant law that applies to their particular field and contend with any differences between applicable state and federal law that apply to their situation. In federal law, one of the areas in which whistleblowers have the most protections and support is in the corporate, financial, and securities context. The Dodd-Frank Act and Sarbanes-Oxley are the dominant pieces of legislation in these sectors that have whistleblowing programs, offering protections from retaliation and options for redress.[38] The Dodd-Frank Act, described once by scholars as "the most comprehensive legislation for protecting whistleblowers in the world,"[39] contains a noteworthy whistleblower program intended both to protect whistleblowers from retaliation and to incentivize them to report information about violations of the securities laws to the Securities and Exchange Commission (SEC).[40]

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36. *See* EU Whistleblowing Directive, *supra* note 11 (providing a wide array of anti- retaliation protections for whistleblowers across various sectors).

37. Connor Berkebile, *The Puzzle of Whistleblower Protection Legislation: Assembling the Piecemeal*, 28 IND. INT'L & COMP. L. REV. 1, 21 (2018) (discussing the patchwork nature of whistleblowing laws in the United States); *see also* Courtney J. Anderson DaCosta, Note, *Stitching Together the Patchwork:* Burlington Northern's *Lessons for State Whistleblower Law*, 96 GEO. L.J. 951, 957-60 (2008) (noting the inconsistencies in protection that come from the patchwork system of whistleblowing legislation).

38. 15 U.S.C. § 78u-6; 18 U.S.C. § 1514A(a).

39. Christian Chamorro-Courtland & Marc Cohen, *Whistleblower Laws in the Financial Markets: Lessons for Emerging Markets*, 34 ARIZ. J. INT'L & COMP. L. 187, 190 (2017).

40. 17 C.F.R. § 240.21F-1 (2025).

Under the Dodd-Frank Act's bounty program, as will be discussed more below, financial rewards are available for whistleblowers who voluntarily report "original information" to the SEC that results in a successful enforcement action against the wrongdoer.[41] These rewards range between ten and thirty percent of the monetary sanctions collected in that particular action.[42] On the retaliation front, the Dodd-Frank Act provides that "[n]o employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower" in providing information about wrongdoing to the SEC; in taking part in any SEC investigation or judicial or administrative action; or in making any disclosures that would be required or protected under specified federal laws and laws, rules, or regulations of the SEC.[43] Thus, the statute articulates a clear anti-retaliation provision covering a wide variety of types of retaliation. If an employer retaliates against a whistleblower in violation of these provisions, the Dodd-Frank Act gives whistleblowers a direct private right of action in federal court to seek redress against their employer- retaliator within a six-year statute of limitations, with remedies that may include reinstatement of employment, compensation for litigation costs, and double back pay.[44]

Under the Sarbanes-Oxley whistleblower program, public companies are prohibited from retaliating, including demoting, suspending, threatening, harassing, or discriminating against employee-whistleblowers for reporting believed violations of the securities laws either internally within their organization or externally to third parties.[45] If retaliated against, whistleblowers under Sarbanes-Oxley "shall be entitled to all relief necessary to make the employee whole," including the remedies of reinstatement with the same seniority status; back pay with interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.[46]

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41. *Id.*
42. 15 U.S.C. § 78u-6(b).
43. *Id.* § 78u-6(h)(1)(A).
44. *Id.* § 78u-6(b), (h).
45. 18 U.S.C. § 1514A(a)(1)(A)–(C).

In contrast to whistleblowers having a direct right of action in federal court for redress, as is available under the Dodd-Frank Act, the Sarbanes-Oxley whistleblower program requires whistleblowers who have been retaliated against to file administrative complaints with the Occupational Safety and Health Administration (OSHA) within a short 180-day statute of limitations.[46] Once OSHA, as the federal government agency in charge of facilitating Sarbanes-Oxley, receives a retaliation complaint, it investigates the claim and, if substantiated, provides eligible whistleblowers with relief to make them whole.[47] Therefore, whistleblowers seeking redress under Sarbanes-Oxley have only an administrative remedy available to them, rather than the ability to seek redress against the retaliator directly in federal court, as the Dodd-Frank Act provides.[48]

Turning to U.S. tax law, Section 7623 of the Internal Revenue Code allows the IRS to reward whistleblowers who provide the agency with information about tax non-compliance with fifteen to thirty percent of the proceeds collected in a successful tax enforcement action due to the whistleblower's information.[49] In addition, the statute protects tax whistleblowers from retaliation by their employers for reporting any violations pursuant to this statute, allowing an aggrieved whistleblower to bring an enforcement action by filing a complaint with the Secretary of Labor within a 180-day statute of limitations.[50] Thus, the retaliation program is similar to Sarbanes-Oxley's in providing only an administrative remedy, rather than direct access to federal court. Potential remedies for a successful tax whistleblower include reinstatement of employment, "the sum of 200 percent of the amount of back pay and 100 percent of all lost benefits, with interest," and other litigation costs.[51] Tax whistleblowing significantly helps the IRS collect valuable information about tax violations and tax non-compliance that otherwise would be highly unlikely to be obtained. [52]

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46. *Id.* § 1514A(c)
47. *Id.* § 1514A(c)(1).
48. *Compare* 18 U.S.C. § 1514A(b), *with* 15 U.S.C. § 78u-6(h).
49. 26 U.S.C. § 7623(b).
50. *Id.* § 7623(d).
51. *Id.* § 7623(d)(3).
52. *See* Jennifer M. Pacella, *Bounties for Bad Behavior: Rewarding Culpable Whistleblowers Under Dodd-Frank and Internal Revenue Code*, 17 U. PA. J. BUS. L. 345, 351–52 (2015) (discussing the structure and usefulness of the IRS whistleblower program); *see also* Miriam H. Baer, *Reconceptualizing the Whistleblower's*

The False Claims Act is also an important and notable whistleblowing statute, carrying the longest history of whistleblower protections in the United States. Known as the "*qui tam*" program, private citizens (called "relators" under the statute) may bring a civil action on the U.S. government's behalf against individuals who defraud the government by committing acts such as submitting false claims for payment from the federal government, knowingly using false statements to decrease an obligation to pay money to the government, or inducing the payment of a false claim.[53] In such cases, the relator, a whistleblower, brings forth an action in federal district court in the name of the government, at which point the federal government has sixty days to intervene. If the government opts not to intervene in the lawsuit, the relator may proceed alone.[54]

The False Claims Act, described as "the lodestar of private enforcement of public law," like the other whistleblowing laws discussed, makes bounty rewards available to the relator.[55] If the government decides to proceed with the action, the relator may receive between fifteen and twenty-five percent of the proceeds of the action or settlement of the claim, which varies based on the extent to which the person substantially contributed to the action, or between twenty-five and thirty percent if the government decides not to proceed with the action.[56]

For instances in which the whistleblower is a federal employee, the Whistleblower Protection Act of 1989 protects those who report on instances of governmental fraud, corruption, abuse, illegality, and unnecessary government expenditures from retaliation, whether the whistleblower reported from within the government agency or outside of it.[57] This Act established the Office of Special Counsel to protect whistleblowers from retaliation by ensuring that federal employee-whistleblowers do not suffer adverse consequences

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Dilemma, 50 U.C. DAVIS L. REV. 2215, 2235–36 (2017) (summarizing how the IRS whistleblower program incentivizes reporting).

53. 31 U.S.C. § 3730(b).

54. *Id.*

55. Dennis J. Ventry, Jr., *Whistleblowers and* Qui Tam *for Tax*, 61 TAX LAW. 357, 368 (2008).

56. 31 U.S.C. § 3730(d)(1)–(2).

57. 5 U.S.C. § 2302(b)(8); *see also* Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16 (1989) (codified as amended in scattered sections of 5 U.S.C.).

from practices that violate this statute and to act in the best interests of the employees.[58]

The Whistleblower Protection Act of 1989 also protects the refusal of a government employee to obey illegal orders.[59] This act applies to most executive branch employees, and although some, such as members of government intelligence communities, are excluded from its protections, it does protect whistleblowers from reporting classified information to Congress if the information that is being disclosed was classified by the head of a non-intelligence element agency and if the disclosure does not reveal intelligence sources and methods.[60]

As discussed above, federal whistleblowing programs under the Dodd-Frank Act, the Internal Revenue Code, and the False Claims Act all provide bounty rewards with the goal of incentivizing whistleblowers to come forward. Interestingly, the whistleblower programs of the Dodd-Frank Act and the Internal Revenue Code were based on the original bounty model that first began with the False Claims Act.[61] The False Claims Act is often referred to as the "gold standard" of whistleblower protections and bounty rewards.[62] The policy rationale behind supporting whistleblower bounty programs is to tip the cost/benefit scale in favor of the whistleblower deciding to come forward, given that the decision to become a whistleblower is often incredibly difficult and fraught with negative and long-lasting personal, financial, and other consequences for whistleblowers and their families.[63] As one notable whistleblowing scholar

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58. Whistleblower Protection Act of 1989, *supra* note 57, § 2(b). The statute reads "that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration."

59. Robert G. Vaughn, *Public Employees and the Right to Disobey*, 29 HASTINGS L.J. 261 (1977) (discussing the statutory right to disobey).

60. 5 U.S.C. § 2302(b)(8)(C).

61. *See* Pacella, *supra* note 52, at 364 (discussing the origins of each of these bounty programs).

62. Geoffrey Christopher Rapp, *Mutiny by the Bounties? The Attempt to Reform Wall Street by the New Whistleblower Provisions of the Dodd-Frank Act,* BYU L. REV. 73, 76 (2012).

63. Geoffrey Christopher Rapp, *States of Pay: Emerging Trends in State Whistleblower Bounty Schemes*, 54 S. TEX. L. REV. 53, 59 (2012) (discussing the various obstacles that whistleblowers often face in deciding to come forward); Richard Moberly, *Protecting Whistleblowers by Contract*, 79 U. COLO. L. REV. 975, 980 (2008) (discussing the costs of coming forward that whistleblowers experience).

expressed, "almost all the benefits of whistleblower disclosures go to people other than the whistleblower, while most of the costs fall on the individual whistleblower."[64] Bounty rewards offset the inevitable cost of whistleblowing and serve as an incentive to come forward.

Unfortunately, as stated, retaliation is still the most common response to whistleblowing, and the ways in which retaliation manifests are vast and may include such actions as termination from employment, demotion, harassment, exclusion, and other adverse consequences.[65] By providing whistleblowers with a financial incentive to come forward, the government can counteract some of the negative effects that commonly result for whistleblowers while also obtaining otherwise unknowable, valuable internal information about fraud and wrongdoing.[66] Given that whistleblower reports tend to be much more effective than external audits at uncovering corporate and government scandals and wrongdoing,[67] a bounty program is incredibly beneficial to any whistleblowing legislative development. Thus, it is a positive development that a number of U.S. whistleblowing laws contain such programs.

As will be explored in more detail in the next section, the EU Whistleblowing Directive interestingly does not include a bounty program, but does provide extensive retaliation protections that greatly exceed protections available under U.S. law.[68] One of the most striking differences between U.S. law and the EU Whistleblowing Directive is that the latter is a comprehensive whistleblowing law intended to apply to a wide range

64. Moberly, *supra* note 63.

65. Jennifer M. Pacella, *Facilitating the Compliance Function*, 71 Rutgers U. L. Rev. 579, 580 (2019) (noting that research and surveys reveal that retaliation against whistleblowers is still very widespread across various industries); Mary Kreiner Ramirez, *Blowing the Whistle on Whistleblower Protection: A Tale of Reform Versus Power*, 76 U. Cin. L. Rev. 183, 185–86 (2007) (discussing the widespread nature of employer retaliation against whistleblowers).

66. S. Rep. No. 111-176, at 110–11 (2010) (discussing the development of whistleblower bounty programs in U.S. federal laws).

67. *Id.* at 110.

68. *See* Uhlmann, *supra* note 28, at 219 (noting how in Europe, specifically in Germany, a whistleblower bounty system is not about simply introducing an award system but about how it is structured and carried out, which may create problems with the authorities who would manage these given that, unlike in the United States, "the handling of bounties is virtually non-existent in the German legal culture."). Uhlmann also states that another complication of a bounty system involves "the crowding out effects, [that] the moral dimension of the action is diluted because of the presence of awards." *Id.*

of industries, while the U.S. whistleblowing legal landscape is a hodge-podge of laws depending on industry, sector, and eligibility for protection. The comprehensiveness of the EU Whistleblowing Directive makes a significant difference for whistleblowers with respect to their levels of protection.

C. *EU Whistleblowing Directive*

In 2019, the Council of Europe adopted the monumental and transformative EU Whistleblowing Directive, which instituted across the European Union consistent retaliation protections for whistleblowers and safe mechanisms for reporting violations, and mandated that all EU Member States adopt the directive's requirements into their own national law within two years.[69] The road leading up to this development spanned many years. The sheer number of whistleblowing cases over the last decade strongly influenced and encouraged action in this arena, as the cautionary tales of numerous whistleblowers came to the forefront.[70] Such whistleblowers included Antoine Deltour, who leaked tax rulings against several multinational companies based in Luxembourg and founded "Luxleaks"; Edward Snowden, who revealed classified documents regarding surveillance programs led by the U.S. National Security Agency; and Chelsea Manning, who reported on human rights violations in Iraq and elsewhere.[71]

In 2017, a "Special Eurobarometer Survey" on corruption found that three-quarters of respondents believed that corruption was widespread across local, national, and regional institutions and that 81% of EU citizens who had become aware of corruption and unlawful behavior did not report it due to fear of retaliation.[72] In addition, the European Court of Human Rights had, in several decisions before it, ruled in favor of whistleblowers on grounds of freedom of expression.[73]

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69. EU Whistleblowing Directive, *supra* note 11.

70. Micaela Del Monte with Titouan Faucheux, *Protecting Whistleblowers in the EU*, Eur. Parl. Research Serv. PE 747.103 (Sep. 2024).

71. *Id.* at 2

72. *Id.*; *see also* TNS Opinion & Social, *Special Eurobarometer 470: Corruption* (Dec. 2017), survey requested by the European Commission, Directorate-General for Migration & Home Affairs, europa.eu/eurobarometer/surveys/detail/2176.

73. *See, e.g.*, Guja v. Moldova (No. 2), App. No. 1085/10, ¶ 10 (Feb. 27, 2018), hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181203%22]}; Matúz v. Hungary, App. No. 73571/10, Eur. Ct. H.R. (Oct. 10, 2014); Marchenko

Prior to the EU Whistleblowing Directive's enactment, seeking redress through the European Court of Human Rights was the only mechanism for aggrieved whistleblowers from nations without any whistleblowing protections. However, this process proved insufficient to create the type of robust whistleblower protections that were needed throughout Europe.[74] The EU Whistleblowing Directive generally follows the jurisprudence of the European Court of Human Rights as it pertains to whistleblowing. However, it does not provide retaliation protections for political whistleblowers, given that matters of national security or classified information are strictly in the domain of national law, thereby rendering that particular subset of whistleblowing inappropriate for the EU to govern.[75]

A report by a special rapporteur to the EU Committee on Legal Affairs and Human Rights also significantly impacted the emerging legislation by noting that whistleblower protection is an issue of fundamental rights, including freedom of expression and information, and revealing that fewer than twenty EU Member States had a comprehensive whistleblower protection law in place.[76] Many years before the EU Whistleblowing Directive was actually adopted, the European Parliament had consistently called on the European Commission to establish conforming EU whistleblowing protection provisions. These provisions included: a 2013 resolution on organized crime; a corruption and money laundering legislative proposal establishing comprehensive public and private sector protections; and, in 2015, a tax ruling resolution that whistleblowers might be subject to negative repercussions and a resolution about transparency, coordination, and convergence of corporate tax policies in the EU that further emphasized the need for whistleblower protections.[77] Then, in 2017, the European

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v. Ukraine, App. No. 4063/04, Eur. Ct. H.R., ¶ 53–54 (Feb. 19, 2009); Kudeshkina v. Russia, App. No. 29492/05, Eur. Ct. H.R., ¶ 99–102 (Feb. 26, 2009); Heinisch v. Germany, App. No. 28274/08, Eur. Ct. H.R., ¶ 93–95 (July 21, 2011); Sosinowska v. Poland, App. No. 10247/09, Eur. Ct. H.R., ¶ 87 (Oct. 18, 2011); Bucur v. Romania, App. No. 40238/02, Eur. Ct. H.R. Information Note (Jan. 8, 2013), Pasko v. Russia, App. No. 69519/01, Eur. Ct. H.R. (Oct. 22, 2009).

74. Arielle Gerber, *Seizing the Opportunity for Advanced Whistleblower Protections and Rewards in the European Public Prosecutor's Office*, Colum. Hum. Rts. L. Rev. 313, 326 (2022).

75. Vigjilenca Abazi, *The European Union Whistleblower Directive: A 'Game Changer' for Whistleblowing Protection?*, 49 Indus. L. J. 640, 643 (2020).

76. Gerber, *supra* note 74, at 333.

77. Del Monte, *supra* note 70.

Parliament called for a resolution on the role that whistleblowers play in protecting the financial interests of the EU and the importance of their rights, expressing regret that the European Commission had not yet taken actual legislative action on these various requests.[78]

Finally, the EU Whistleblowing Directive was enacted in 2019. It provides minimum harmonization standards at the national level for each EU Member State, which were each given two years to transpose the directive into national law. Given that each EU Member State was starting from a different point in terms of the comprehensiveness or even the existence of national whistleblower laws, this two-year period for implementing the directive was aimed at allowing ample time to adapt national laws to conform with the minimum requirements of the EU Whistleblowing Directive.[79] The main objective of the EU Whistleblowing Directive is to protect whistleblowers (or, as the directive refers to them, "reporting persons") from retaliation and to provide "safe channels" to report violations of the law.[80] "Reporting persons" encompass "persons who work for a public or private organization or are in contact with such an organization in the context of their work-related activities."[81] The language of the directive articulates the following in terms of eligibility for retaliation protections:

> This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work- related context including, at least, the following:
>
> (a) persons having the status of worker, within the meaning of Article 45(1) TFEU, including civil servants;
>
> (b) persons having self-employed status, within the meaning of Article 49 TFEU;
>
> (c) shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees;

78. *Id.*
79. *See* Abazi, *supra* note 75, at 643.
80. EU Whistleblowing Directive, *supra* note 11.
81. *Id.* pmbl. para. 1.

(d) any persons working under the supervision and direction of contractors, subcontractors, and suppliers.[82]

The EU Whistleblowing Directive is very comprehensive in that it covers reporting in the following areas: public procurement; financial services; product safety and compliance; transport safety; environmental protection; radiation protection and nuclear safety; food safety and animal welfare; public health; consumer protection; privacy protection; and breaches affecting the financial interests, internal market, competition rules, and corporate tax laws of the EU.[83] Therefore, its reach is quite broad and not merely industry-specific in terms of the protections being offered, as seen in the U.S. model. Some of the key provisions of the EU Whistleblowing Directive relate to the motivation of the whistleblower and whether they reasonably believed there was wrongdoing, the type of report made, whether the report was internal or external, and the importance of confidentiality and/or anonymity.

To be eligible for retaliation protections, reporting persons must have "reasonable grounds to believe" that the matters upon which they report are true, which is viewed based on the information and circumstances available to them at the time of the report.[84] Even if it turns out that there was not an actual violation of law, protections are still made available to whistleblowers if they had an honest, good-faith belief of a violation.[85] In addition, the EU Whistleblowing Directive acknowledges the reality that most whistleblowers report internally within their organizations, rather than externally, and acknowledges the many benefits of doing so, while also recognizing the importance of the whistleblower having a choice in where they report.

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82. *Id.* art. 4. "TFEU" stands for Treaty on the Functioning of the European Union, one of the two treaties that forms the constitutional basis of the European Union. *See* Consolidated Version of the Treaty on the Functioning of the European Union arts. 45 & 49, Oct. 16, 2012 O.J. (C 326)

83. European Whistleblowing Directive, *supra* note 11, art. 2. *See also* Sharon K. Sandeen & Ulla-Maija Mylly, *Trade Secrets and the Right to Information: A Comparative Analysis of E.U. and U.S. Approaches to Freedom of Expression and Whistleblowing*, 21 N.C.J.L. & TECH. 1, 49 (2020) (noting that in U.S. whistleblowing law, "there are different laws for different situations and sectors," so even if the EU Whistleblowing Directive covers specific sectors, its reach is still further than that of the U.S.).

84. European Whistleblowing Directive, *supra* note 11, art. 2. pmbl. para. 32.

85. *Id.*

Accordingly, the EU Whistleblowing Directive protects against retaliation regardless of whether the report was made internally or externally.[86] It also applies to all public and private entities that contain at least fifty workers, and EU Member States must ensure that all such entities create channels and procedures for internal reporting and follow-up procedures.[87] The EU Whistleblowing Directive also contains provisions acknowledging that anonymous reporters should be entitled to protection if they are later identified and suffer retaliation.[88] The EU Whistleblowing Directive calls upon Member States to decide which legal entities and competent authorities in the private and public sectors are required to accept and follow through with responding to anonymous reports that fall within its scope.[89] It also contains an important recognition of the fact that whistleblowers are often accused of violating duties of confidentiality or loyalty that they may owe to their workplaces and the power imbalance of such situations. The directive thus emphasizes the need to protect individuals from being sued for allegedly violating these duties, given that whistleblowing would always be an exception to maintaining such duties.[90]

When the EU Whistleblowing Directive was developed in 2019, it ordered EU Member States to enact the "laws, regulations, and administrative provisions necessary" to comply with the directive by December 17, 2021.[91] EU Member States were then given additional time until December 17, 2023 to implement the required internal reporting channels.[92] The directive also requires that on an annual basis going forward, EU Member States must submit to the European Commission information that includes the number of whistleblowing reports received by authorities; the number of investigations and proceedings that commenced as a result of the report; and, if available, the estimated financial damage received and repercussions for organizations after investigations that are related to the wrongdoing that whistleblowers have reported.[93] Then, the European Commission is required to submit a report to the European

86. *Id.* pmbl. para. 33.
87. *Id.* arts. 8, 26.
88. *Id.* pmbl. para. 34.
89. *Id.*
90. *Id.* pmbl. para. 91.
91. *Id.* art. 26.
92. *Id.* arts. 8, 26.
93. *Id.* art. 27 para. 2.

Parliament and the European Council pertaining to the reports received by the EU Member States and the directive's overall impact.[94]

As shown by its many provisions, the EU Whistleblowing Directive represents an extremely comprehensive and thorough attempt at facilitating the protection of whistleblowers across a wide variety of nations in order to establish conformity and consistency. The next section will put forward a comparative analysis between the EU Whistleblowing Directive and the whistleblowing laws of the United States, highlighting the provisions in which the two are most notably different.

II.
Comparative Analysis of EU and U.S. Whistleblowing Laws

There are a number of provisions in the EU Whistleblowing Directive that appear to exceed the protections available under U.S. whistleblowing law, serving as an excellent model for suggested amendments to the U.S. whistleblowing law. This Part will explore the most significant of these provisions and offer suggestions for U.S. law to improve overall protections for whistleblowers. Figure 1, featured later in this Part, summarizes the key differences between various whistleblowing laws in the United States and the EU Whistleblowing Directive, such as the type of whistleblower protection available, and demonstrates the vast variation between the laws.

A. *Types of Protected Reporting*

The EU Whistleblowing Directive is striking in that it is binding on entities in both the public and private sectors.[95] This is not the case for all U.S. whistleblowing laws. One of the most notable whistleblowing programs, Sarbanes-Oxley, for example, applies only to public companies.[96] The language of

94. *Id.* This report must also consider whether further measures would be needed to effectively further the objectives of the EU Whistleblowing Directive.

95. *Id.* art. 4.

96. 18 U.S.C. § 1514A(a) (stating that "[n]o company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934" may retaliate against an employee-whistleblower).

Sarbanes-Oxley bars any such company from "discharg[ing], demot[ing], suspend[ing], threaten[ing], harass[ing], or in any other manner discriminat[ing] against an employee in the terms and conditions of employment because of any lawful act done by the [whistleblowing] employee."[97] The reason that the lack of Sarbanes-Oxley protections for whistleblowers in the private sector is so glaring is because this statute is otherwise very comprehensive in protecting all types of whistleblowers, as it is the only financial and securities-related whistleblower program that provides protections to both internal whistleblowers who report within their organizations and to external whistleblowers who report to the government or another external source.[98] Legal protection for both internal and external whistleblowers is not replicated in any other major U.S. whistleblower protection legislation in the securities and financial sector, as the Dodd-Frank Act protects only external whistleblowers who report directly to the SEC from protection. This limitation arises from the statute's narrow definition of the term "whistleblower," which is defined as "any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the [SEC], in a manner established, by rule or regulation, by the [SEC]."[99] Although the Dodd-Frank Act applies to both private and public companies,[100] the fact that the statute fails to protect the most common type of whistleblower—the internal whistleblower—excludes an entire universe of whistleblowers from the benefits of this statute's protections. It is a glaring hole in an otherwise very comprehensive whistleblowing statute. The EU Whistleblowing Directive, in contrast, protects both internal and external whistleblowing.[101]

From a company standpoint, internal whistleblowers are incredibly valuable, as they often raise concerns and red flags early enough to resolve them without risk of prosecution or litigation, thereby saving the company money, bad press, loss of goodwill, and all of the other negative consequences that

97. *Id.*
98. *Id.*
99. 15 U.S.C. § 78u-6(a).
100. *See id.*; *see also* Verity Winship, *Private Company Fraud*, 54 U.C. DAVIS L. REV. 663, 717 (2020) (discussing the public and private nature of the Dodd-Frank Act's whistleblowing program).
101. EU Whistleblowing Directive, *supra* note 11, arts. 8, 10.

accompany unlawful behavior.[102] In addition, because the main goal of whistleblowing is to shed light on wrongdoing so that it may be addressed and curtailed, rather than initiating prosecution or civil actions against wrongdoers, internal reporting through whistleblowers is a much more effective tool compared to an external whistleblower report.[103] A 2018 study from NAVEX Global, the leading whistleblower hotline and incident management systems provider examining over 1.2 million records of internal whistleblower reports, revealed that internal whistleblowers and effective internal hotlines are key tools in meeting business goals and objectives because "[t]he more employees use internal whistleblowing hotlines, the [fewer] lawsuits companies face, and the less money firms pay out in settlements."[104] Thus, whistleblowing may be thought of as an essential preventative mechanism for avoiding violations of the law and other forms of wrongdoing. Therefore, it is a significant omission not to have all whistleblowing laws protect internal whistleblowing.

Much like the Dodd-Frank Act, state-level whistleblower protections also tend to protect only external whistleblowers, varying depending on which specific types of external protections are available.[105] Additionally, most state whistleblowing statutes only cover employees of public entities, much like Sarbanes-Oxley.[106]

The inconsistencies discussed herein are the direct result of the patchwork nature of U.S. whistleblowing laws and the glaring lack of one comprehensive piece of legislation that would apply to private and public sector entities, as well as internal and external whistleblowers, regardless of industry. In contrast, the EU Whistleblowing Directive applies to all workers

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102. Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34359 (June 13, 2011) (codified at 17 C.F.R. pts. 240, 249) [hereinafter Dodd-Frank Final Rules].

103. *See* Bishara, Callahan & Dworkin, *supra* note 21, at 76.

104. Stephen Stubben & Kyle Welch, *Research: Whistleblowers Are a Sign of Healthy Companies*, Harv. Bus. Rev. (Nov. 14, 2018), hbr.org/2018/11/research-whistleblowers-are-a-sign-of-healthy-companies.

105. Orly Lobel, *Citizenship, Organizational Citizenship, and the Laws of Overlapping Obligations*, 97 Calif. L. Rev. 433, 447 (2009) (citing Del. Code Ann. tit. 29, § 5115 (2003) (requiring reporting to the office of Auditor of Accounts); Md. Code Ann., State Pers. & Pens. §§ 3-301-306 (LexisNexis 2004) (Secretary of Personnel); Wash. Rev. Code Ann. § 42.40.010 (West 2006) (Office of State Auditor)).

106. *Id.* at 447.

in the public or private sector who report breaches of law across a range of industry sectors.[107] In sum, there is simply no U.S. equivalent whistleblower law that is as comprehensive in its reach and subject matter.

B. *The Use of Internal Documents to Support a Whistleblower Claim*

Another notable difference between the EU Whistleblowing Directive and U.S. whistleblowing laws concerns the legality of whistleblowers removing confidential documents from the workplace to support their claims when making external reports. To ensure a strong whistleblower report or claim, it behooves the whistleblower to provide information that is as comprehensive, specific, and informative as possible. This is especially relevant in the case of some of the U.S. whistleblowing laws mentioned herein in which whistleblowers are aiming to receive a bounty reward for their information.[108] To achieve this, whistleblowers commonly provide internal company documents that are either evidence of the wrongdoing for which they are reporting or piece together key parts of the puzzle to understand an underlying scheme, illegality, or serious concern.[109]

To fully consider how providing company documents facilitates whistleblowing, it is helpful to look to the Dodd-Frank Act's whistleblower program as an example. To either make a case for retaliation protections or to receive a bounty reward under this program, the whistleblower's ability to provide documentary support is paramount, and the more substantiated and detailed the whistleblower's information, the higher the likelihood of receiving a bounty reward on the higher end of the SEC's available range through the Dodd-Frank Act's bounty program.[110] Whistleblowers submit information to the SEC through completion of "Form TCR" (Tip, Complaint, or Referral), an online portal for submitting to the agency a whistleblower report, and this portal is conducive to attaching or submitting confidential

107. EU Whistleblowing Directive, *supra* note 11, arts. 2, 4.

108. Jennifer M. Pacella, *Silencing Whistleblowers by Contract*, 55 Am. Bus. L.J. 261, 281 (2018).

109. *Id.* at 281–84.

110. *Id.* at 281–82.

documentation.[111] Next, the whistleblower submits the form and documentation either electronically or by downloading and physically mailing or faxing them to the SEC Office of the Whistleblower.[112] As required by law, the SEC maintains numerous safeguards to ensure the confidentiality of this information, treating all information as non-public and barring its transmission to third parties, except under specific circumstances also mandated by law.[113]

Unsurprisingly, employers respond in a myriad of negative ways to a whistleblower's transmission of confidential internal documents in support of their whistleblower reports. Some reactions have included claims that the whistleblower has breached a confidentiality agreement, violated company policy, or disclosed trade secrets, among other allegations.[114] Despite the resistance of employers in this way, judges often apply the common law public policy exception to allow whistleblower disclosures in various situations, demonstrating that confidentiality considerations are never absolute, even in cases involving trade secrets, attorney-client, or physician-patient relationships.[115] Case law is well-established that the public policy interests of allowing whistleblowers to come forward can outweigh those of upholding a contract that contains confidentiality provisions.[116]

Despite the clarity of common law in this context, U.S. legislation is severely lacking to articulate that it is unlawful to bar a whistleblower from turning over confidential, internal documents as part of their claims. For example, the statute and accompanying regulations of the Dodd-Frank Act's

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111. *See id.*; *see also Information About Submitting a Tip*, SEC, www.sec.gov/enforcement-litigation/whistleblower-program/information-about-submitting-whistleblower-tip (last visited June 19, 2025). Whistleblowers may also submit information to the SEC anonymously, but, if pursuing this option, they must be represented by counsel and provide their attorney's contact information.

112. *Information About Submitting a Tip*, *supra* note 111.

113. *See* 15 U.S.C. § 78u-6(h)(2); 17 C.F.R. § 240.21F-7 (2011).

114. Pacella, *supra* note 108, at 273.

115. Terry Morehead Dworkin & Elletta Sangrey Callahan, *Buying Silence,* 36 Am. Bus. L.J. 151 (1998); *see also* Brian Stryker Weinstein, *In Defense of Jeffrey Wigand: A First Amendment Challenge to the Enforcement of Employee Confidentiality Agreements Against Whistleblowers*, 29 S.C. L. REV. 129 (1997).

116. Town of Newton v. Rumery, 480 U.S. 386, 386 (1987); Boston Med. Ctr. v. Serv. Emps. Int'l Union, Local 285, 260 F.3d 16, 21 (1st Cir. 2001) (citing United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 43 (1987) (ruling that, for contract unenforceability to apply, the public policy must be well-established)).

whistleblower program provide no guidance as to the legality of whistleblowers transferring internal company documents in support of their claims. If created, this guidance would serve as a mechanism for whistleblowers, employers, and courts to understand when such transmissions are appropriate versus excessive or inappropriate.[117] In a previous article, I proposed amendments to this whistleblower program's regulatory language to make it clear that whistleblowers may transmit such documentation, provided that it was reasonably accessed, directly relevant to the possible violation, not subject to the attorney-client privilege (unless otherwise permitted by exceptions), and reasonably believed to support the whistleblower's claim.[118] Such amendments would serve as a critical tool in guiding whistleblowers in understanding what is or is not permitted before they collect and submit their reporting materials.[119]

In contrast, the EU Whistleblowing Directive is astonishingly clear as to the lawfulness of a whistleblower's transmission of company documents and the unlawfulness of employer attempts to thwart these efforts. The EU Whistleblowing Directive states that whistleblowers who lawfully acquire or have access to documents containing information about the wrongdoing they have reported "should enjoy immunity from liability."[120] The language goes on to very clearly state that such immunity should apply not only in instances in which whistleblowers report on the content of documents to which they have lawful access, but also "in cases where they make copies of such documents or remove them from the premises of the organization where they are employed, in breach of contractual or other clauses stipulating that the relevant documents are the property of the organization."[121] Therefore, the EU law goes as far as to protect whistleblowers who knowingly violate other agreements or internal policies in order to transmit documentary evidence as part of their claims.

The EU Whistleblowing Directive also goes one step further to clarify that immunity from liability should also apply in cases in which the whistleblower's acquisition or access to the information or documents prompts a concern of civil, administrative,

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117. *See* 15 U.S.C. § 78u-6(h)(1)(B)(iii); 17 C.F.R. § 240.21F-17(b) (2011).
118. Pacella, *supra* note 108, at 285–286.
119. *Id.*
120. EU Whistleblowing Directive, *supra* note 11, pmbl. para. 92.
121. *Id.*

or labor-related liability.[122] The examples given consist of cases in which whistleblowers "acquired the information by accessing the emails of a co-worker or files which they normally do not use within the scope of their work, by taking pictures of the premises of the organization, or by accessing locations they do not usually have access to."[123] The EU Whistleblowing Directive, therefore, includes a very high level of specificity as to the various situations that could emerge in which an employer argues that the whistleblower has committed some unlawful act in the process of gathering together their information.[124] The only limitation that the EU Whistleblowing Directive contains is articulating that in cases in which whistleblowers have obtained the information or documents by committing a criminal offense like trespassing or hacking, then the applicable EU Member State's specific law should govern their criminal liability, rather than the directive itself. Referral to applicable national law also applies in any other instances of possible whistleblower liability stemming from acts or omissions that are not related to the reporting or unnecessary to revealing the wrongdoing.[125] As discussed herein, the EU Whistleblowing Directive has notably very generous provisions regarding the documentary support that whistleblowers can provide, thereby making it more likely that they will report and not be thwarted by the fear of litigation by their employer for breaching some kind of duty.

C. *Type of Employment Relationship*

Another significant difference between the EU Whistleblowing Directive and U.S. whistleblowing laws concerns the type of whistleblower who is protected from retaliation. The directive is very broad in terms of persons protected by the law. It protects all whistleblowers who report on breaches in a "work-related

122. *Id.*
123. *Id.*
124. *See, e.g.*, Erhart v. Bofi Holding, Inc., 612 F. Supp. 3d 1062, 1080–81 (S.D. Cal. 2020) (noting various ways in which employers commonly challenge the actions of whistleblowers).
125. EU Whistleblowing Directive, *supra* note 11, pmbl. para. 92. ("In those cases, it should be for the national courts to assess the liability of the reporting persons in the light of all relevant factual information and taking into account the individual circumstances of the case, including the necessity and proportionality of the act or omission in relation to the report or public disclosure.").

context," whether reporting internally or externally and regardless of whether the employee's work is ongoing or has concluded. The protections extend to self-employed workers, those who are "shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees," and any whistleblower who works under the supervision and direction of contractors, subcontractors, and suppliers.[126] Any third parties connected to the whistleblower who could also be susceptible to retaliation are also included, including colleagues and relatives of the whistleblower, as well as any legal entities that whistleblowers "own, work for or are otherwise connected with in a work-related context."[127] Strikingly, the EU Whistleblowing Directive also applies to whistleblowers "whose work-based relationship is yet to begin in cases where information on breaches has been acquired during the recruitment process or other pre-contractual negotiations," thereby applying also to whistleblowers who are job applicants.[128] Thus, the retaliation protections of the EU Whistleblowing Directive are incredibly broad and, in many ways, vastly exceed the scope of U.S. whistleblowing laws.

In the whistleblowing laws of the United States, there are many variations with respect to the type of whistleblower covered by retaliation protections. Starting again with the whistleblower program of the Dodd-Frank Act, one very notable difference is that job applicants are not protected under this statute. The language of the Dodd-Frank Act's whistleblower program states that "[n]o *employer* may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower *in the terms and conditions of employment* because of any lawful act done by the whistleblower" in providing information.[129] As is visible from the clear language above, the Dodd-Frank Act's statutory language does not explicitly protect whistleblower job applicants, nor does it provide leeway for courts to reach this kind of interpretation.[130]

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126. *Id.* art. 4.
127. *Id.*
128. *Id.*
129. 15 U.S.C. § 78u-6(h) (emphasis added).
130. *Id.* In contrast, while the language of Sarbanes-Oxley lacks specific mention of job applicants being protected from retaliation, the regulations implementing the statute suggest that job applicants are protected because "employee" is defined as follows: "an individual presently or formerly working

The regulations that the SEC promulgated interpreting the Dodd-Frank Act's whistleblower program leave little question to the fact that an official employment relationship is required for retaliation protection eligibility, including the utter lack of reference to the terms "job applicants" or "prospective employers," which, by contrast, is present in the regulations interpreting the Sarbanes-Oxley whistleblower program.[131] In addition, use of "employers" and "employees" comprises the standard language in the regulations, and the SEC makes notable emphasis on encouraging employees to utilize the internal reporting channels of their workplaces before reporting to the SEC due to the various organizational benefits of doing so.[132] Thus, the EU Whistleblowing Directive covers an entire area of vulnerable whistleblowers that is completely absent from one of the most notable U.S. whistleblowing laws.

Given that there is little to no consistency between the various laws mentioned herein, Figure 1 helps to further illustrate the variations among the different whistleblowing laws.

Type of Whistleblower Protection	United States Law					European Union Law
	Sarbanes-Oxley	Dodd-Frank Act	False Claims Act	Internal Revenue Code	Whistle blower Protection Act	
Internal Reporting Protected	X		X	X	X	X
External Reporting Protected	X	X	X	X	X	X

for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person." 29 C.F.R. § 1980.101 (2015).

131. 15 U.S.C. § 78u-6(a)(6); *see also* Dodd-Frank Final Rules, *supra* note 102.

132. Dodd-Frank Final Rules, *supra* note 102.

Specific Guidance within the Law on the Transmission of Company Documents with Whistleblower Report						X
Employment Relationship Required Between Whistleblower and Retaliator		X	X	X		
Direct Right of Action in Federal Court for Retaliation		X	X			May differ depending on the EU Member State
Need to Exhaust Administrative Remedy for Retaliation	X			X	X	May differ depending on the EU Member State
Gives a Bounty Reward		X	X	X		

FIGURE 1: COMPARISON OF U.S. AND EU WHISTLEBLOWING FRAMEWORKS[133]

As demonstrated above, the various U.S. regulatory regimes governing whistleblowing differ considerably in terms of which anti-retaliation protections they provide, with little to no consistency among the provisions. As a result, a whistleblower in

133. *See* 18 U.S.C. § 1514A (Sarbanes-Oxley); 15 U.S.C. § 78u-6 (Dodd-Frank Act); 31 U.S.C. § 3730(b) (False Claims Act); 26 U.S.C. § 7623(b), (d) (Internal Revenue Code); 5 U.S.C. § 2302 (Whistleblower Protection Act); Council Directive 2019/1937, 2019 O.J. (L 305) (EU) (EU Whistleblowing Directive).

the United States must navigate a confusing statutory maze, one differing by their industry, to be aware of the protections available to them. Conversely, a whistleblower in the European Union has the benefit of turning to only one source of law to know how they will be protected if they decide to come forward.

D. *Country Case Study & Cultural Considerations*

While the EU Whistleblowing Directive exceeds U.S. law on many fronts, one interesting way that it differs pertains to unique cultural and historical considerations. A critical component in predicting the success of the EU Whistleblowing Directive and also managing how the new law will be used and enforced over the years involves the acknowledgment that many of the EU Member States have histories that are notably different than that of the United States, specifically pertaining to the historical presence of former totalitarian governing regimes. Given that silence, conformity, and an unquestioning obedience to dictatorial rule were often equated with survival in these totalitarian regimes,[134] historical remnants of these experiences are likely to have an impact on the ways in which society views whistleblowers overall in those regions, even if Europe has obviously evolved from those dark times in history. Italy is a relevant example. It endured two decades of totalitarian rule from 1922 to 1943 under the fascist government of dictator, Benito Mussolini[135] and illustrates the kinds of struggles lingering from a complex historical landscape that some EU Member States may experience in fully integrating the objectives of the EU Whistleblowing Directive.

Like many other EU Member States, Italy failed to implement the requirements of the EU Whistleblowing Directive by the original deadline of December 2021 and did not make

134. *See* Massimo Leone, *Silence Propaganda: A Semiotic Inquiry into the Ideologies of Taciturnity,* Cambridge Univ. Press (Jan, 1, 2025), www.cambridge.org/core/journals/signs-and-society/article/silence-propaganda-a-semiotic-inquiry-into-the-ideologies-of-taciturnity/FB18811512B22D18D7B1140B550E9C78 (discussing the existence of silence as a means to facilitate fascist regimes).

135. Fred Frommer, *How Mussolini Seized Power in Italy—And Turned It Into a Fascist State*, History (Apr. 11, 2022), www.history.com/articles/mussolini-italy-fascism (last visited June 17, 2025).

actual progress on implementation until late 2022.[136] In 2017, Italy instituted legal protections for whistleblowers through "Law 179/2017," but this law lacked provisions for anonymity, imposed restrictions that only allowed private sector employees to report internally, and set limits on which organizations were obligated to protect whistleblowers.[137] Political opinions in Italy were divided for the cultural reasons discussed herein, even as the nation's whistleblowing law was developing. Despite this political divide, this legislation was ultimately passed in large part because of Italy's international obligations and pressure to "conform" to the legislative developments protecting whistleblowers in other parts of the world, especially in Anglo-Saxon countries.[138]

Under Law 179/2017, whistleblower protections in Italy applied only when a private company had adopted what is known as a "Model 231," which is essentially a compliance program with a system of principles, rules, and procedures aimed at preventing various illegalities in the internal and external activities of companies with a supervisory body that monitors and supervises the effectiveness of the program.[139] Under Law 179/2017, any company that had voluntarily chosen to adopt a "Model 231" would then be responsible for establishing a reporting and retaliation protection system for whistleblowers.[140] Therefore, the implementation of whistleblower protections was not mandatory.

In October 2020, the Senate of the Republic of Italy, the upper house of the Italian Parliament, passed a draft law mandating the government to begin the transposition of thirty-three different European Union laws, including the EU

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136. Niall McCarthy, *Italy Transposes the EU Whistleblowing Directive*, Integrity Line (Nov. 22, 2023), www.integrityline.com/expertise/blog/italy-transposes-eu-whistleblowing-directive/.

137. *Id.*; *see also* Arts. 2, 54, D. Lgs., n. 165, 30 marzo 2001 (It.); L. n. 179, 30 novembre 2017 (It.).

138. Donini, *supra* note 12.

139. These illegalities include the vast spectrum of the following: bribery; corruption; fraud against the state; market manipulation and insider trading; false accounting; money laundering; handling stolen goods; health and safety crimes; intellectual property crimes; infringement of trademarks; environmental crimes; and tax offenses. *See* Maurizio Vasciminni et al., *Corporate Liabilities under Italian Law: Risks and Remedies for Foreign Companies Operating in Italy*, Int'l Bar. Assc'n (2024), www.ibanet.org/article/C6FF46FD-5C69-4DAD-86EA-457C1D34436D.

140. L. n. 179, 30 novembre 2017 (It.); *see* McCarthy, *supra* note 136.

Whistleblowing Directive.[141] The process began in April 2021 but remained fairly inactive until September 2022, at which point a new delegation law was passed to facilitate the transposition process within three months.[142] In fact, the European Commission referred Italy, as well as seven other EU Member States, to the European Court of Justice for failure to transpose the EU Directive on Whistleblowing in a timely manner.[143] Then, on March 9, 2023, the Italian Council of Ministries approved a law in the form of Legislative Decree 24/2023 (Italian Whistleblowing Law), which was published in the Official Journal of the Italian Republic and replaced Law 179/2017 four months later.[144]

While Law 179/2017 covered only the reporting of potential compliance violations and instances of corporate criminal liability, the Italian Whistleblowing Law, in line with the EU Whistleblowing Directive, extends the scope of reportable matters to cover both public and private companies that have an average of at least fifty employees.[145] If a workplace has fewer than fifty employees, the Italian Whistleblowing Law applies to those that have adopted Model 231 and covers the reporting of breaches across a very broad range of industries including financial services, consumer protection, transportation, and environmental.[146] The Italian Whistleblowing Law also broadly defines "whistleblower" to include employees, former employees, self-employed workers and consultants, volunteers and interns, shareholders, individuals with management, control, supervisory, or representative powers, and individuals involved in recruitment, contract negotiations, and probationary periods.[147]

There are also very specific requirements relating to internal whistleblowing as part of the law, including: internal

141. McCarthy, *supra* note 136.

142. *Id.*; Letizia Catalano & Piero Magri, *New Regulation on Whistleblowing in Italy: The Role of the Supervisory Body and Coordination with Internal Group Reporting Channels*, Int'l Bar. Assc'n (Aug. 22, 2023), www.ibanet.org/new-regulation-on-whistleblowing-in-Italy-the-role-of-the-Supervisory-Body.

143. *Italy has Transposed the EU Directive: Whistleblowing Law Drafted Behind Closed Doors*, Whistlelink (Mar. 23, 2023), www.mynewsdesk.com/se/whistleblowing-solutions-ab/news/italy-has-transposed-the-eu-directive-whistleblowing-law-drafted-behind-closed-doors-463931.

144. D. Lgs. n. 24, 10 marzo 2023, (It.).

145. *Id.*; *see also* Francesca Rubina Gaudino, *Italy-Whisteblowing*, Data Guidance (June 2024), www.dataguidance.com/notes/italy-whistleblowing (discussing the legislation).

146. Gaudino, *supra* note 145.

147. *Id.*

whistleblowing channels utilizing an appropriate encryption system to ensure data protection and confidentiality throughout the entire process; the need to be easily accessible by all stakeholders; and a workplace guarantee the confidentiality of the whistleblower.[148] Each company subject to the Italian Whistleblowing Law must create a specific policy describing how it will use the internal whistleblowing channel to handle reports and must consult any union representatives that they may have for guidance on the process.[149] Per the requirements of the EU Whistleblowing Directive, retaliation protections are extended not only to the whistleblower, but to every person who assists the whistleblower during the reporting process, including all relatives or individuals who have a "stable emotional bond" with the whistleblower, all colleagues with a regular and current relationship with the whistleblower, and any entities that the whistleblower owns.[150] These provisions, in terms of their breadth of coverage, are simply nonexistent in the United States. Companies in Italy are also required to assign the handling of an internal whistleblower report to an ad-hoc person or team within the company, or to a specialized external entity that must acknowledge receipt within seven days, investigate the report, and provide updates and feedback within three months' time.[151]

The most notable change that the Italian Whistleblowing Law brought is the sheer number of companies that are subject to the new legislation and thus obligated to institute a channel for the receipt and management of internal reports made by whistleblowers.[152] As discussed, prior to the new law, only those companies that adopted a Model 231 compliance program were required to provide any whistleblower provisions. Now, whistleblower protection requirements extend to all companies that employ at least fifty employees under permanent or fixed-term employment contracts over the previous year, regardless of industry.[153] Failure to comply with any of these provisions

148. WHISTLELINK, *supra* note 143.
149. *Id.*
150. *Id.*
151. Sofia Bargellini & Claudia Di Biase, *New Rules and Obligations for Employers in Italy Concerning Whistleblowing*, SEYFARTH (Aug. 8, 2023), www.seyfarth.com/news-insights/new-rules-and-obligations-for-employers-in-italy-concerning-whistleblowing.html.
152. *Id.*
153. *Id.*

will result in administrative fines and sanctions ranging from 10,000 to 50,000 euros for the company.[154] If the company has not adopted or properly managed the required reporting channels, it can also be reported to Italian public authorities, specifically to the country's National Anticorruption Authority (ANAC), which can institute further sanctions against them.[155]

In addition to the historical considerations affecting societal perceptions of whistleblowers in Europe, there are also fascinating linguistic factors that play a role. As is the case in several other EU Member States, it is relevant and highly interesting to note that even the word "whistleblower," having no real Italian translation, is further evidence of the fact that what it stands for is quite literally a foreign concept in Italy, both from a cultural and legal standpoint.[156]

> In the Italian lexicon, no semantically equivalent term exists to that of the Anglo-Saxon version [of the word "whistleblower"] and the absence of an adequate Italian translation is, effectively, the linguistic result of the lack of, from the inside of the Italian socio-cultural context, of a stable recognition "of the thing" to which the word [whistleblower] refers. Without this medium of terminology, one can clearly affirm that in the Italian culture it is merely the concept [of whistleblowing] that is missing, because as [German philosopher] Heidegger has written, "No thing exists for which the word is missing.[157]

This statement represents a fascinating reality of how the literal absence of the word "whistleblower" in the home language and the difficulty of precisely translating it directly affects the mere understanding of the concept and its implications in that

154. *Id.*
155. *See id.*
156. Donini, *supra* note 12.
157. *Id.* The original Italian text of this quote is as follows:

> "[N]el lessico italiano non esiste una parola semanticamente equivalente al termine angloamericano," e che "l'assenza di un traducente adeguato è, in effetti, il riflesso linguistico della mancanza, all'interno del contesto socio-culturale italiano, di un riconoscimento stabile della "cosa" a cui la parola fa riferimento." Senza mezzi termini, si può quindi tranquillamente affermare che nella cultura italiana è proprio il concetto a mancare, perché come scriveva Heidegger: "Nessuna cosa esiste dove la parola manca." (translated by the author into English).

society. This phenomenon exists in numerous other European countries as well.[158] In many European languages, not only is there no direct equivalent of "whistleblower", but pejorative terms like "informant," "denunciator," and "snitch" are still commonly in use by both citizens and the media to describe acts of whistleblowing.[159] Thus, there are very interesting and specific cultural implications in Italy and beyond surrounding not just what whistleblowers are, but also pertaining to whether they should be legally protected in very comprehensive ways. The European Union has paved the way for these developments, leading countries like Italy to increasingly conform to international standards surrounding whistleblowing law. This consistency will surely, over time, make the concept of whistleblowing more of an understood and accepted practice as a means to promote the ethical functioning of organizations.

III.
Proposals for Change

Although there are cultural hurdles to overcome in the general acceptance of whistleblowers both within the European Union and the United States, comparisons between their whistleblowing laws highlight the need to improve U.S. whistleblowing law using the EU Whistleblowing Directive as a model for improvement. In addition, there is much to be gained from the creation of an alliance between the United States and the European Union as it pertains to whistleblowing generally. This alliance can be instrumental in strengthening whistleblowing law in the United States, ensuring a successful transition in the European Union to a conforming legal landscape that greatly protects whistleblowers, and positively influencing the perceptions of whistleblowers in both continents.

A. *Amendments to U.S. Whistleblowing Laws*

It has been several years that whistleblowing legislation in the United States has been in need of an overhaul, and now, with the passing of the EU Whistleblowing Directive, it seems that other countries will soon be surpassing the U.S. domestic

158. Michael Plachta, *Whistleblowers' Protection in Europe: Shortcomings and Need for Change*, 30 Int'l Enf't L. Rep. 32 (2014).
159. *Id.*

landscape of law in this arena. It would benefit whistleblowers all over the United States for Congress to enact one comprehensive, federal whistleblowing law that is applicable regardless of industry, sector, or location.

It is interesting to reflect on the fact that in most other areas pertaining to the rights and well-being of workers, Congress has decided to federalize law into single comprehensive statutes, such as Title VII governing employment discrimination, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Employee Retirement Income Security Act (ERISA) governing pensions and health plans.[160] Yet, whistleblower protections under U.S. law remain piecemeal and subject to significant variations depending on the context.[161] The patchwork nature of these essential laws imposes a greater burden on whistleblowers to individually navigate if and how they will be protected, which parameters are included in covered protections, what forms of redress are available, and timeframes to seek justice against their retaliators.

The lack of one comprehensive U.S. whistleblowing law also has the effect of limiting the number of whistleblowers who will come forward due to so many of the laws being subject-matter specific and involving categories of employer misconduct that are relatively narrow.[162] In addition, whistleblowers face not only inconsistencies among the various federal whistleblowing laws but also with any applicable state whistleblowing laws that may apply to their situation.[163] In addition, the overwhelming inconsistencies among various whistleblower laws make it incumbent upon whistleblowers to consult with attorneys before deciding to come forward, an unaffordable luxury for countless individuals. Yet, a single, comprehensive whistleblowing statute would pave the way for a significantly easier time for would-be whistle blowers to inform themselves of their options and possible protections.

A comprehensive federal whistleblower statute should contain certain key elements, many of which are already built into

160. DaCosta, *supra* note 37, at 984.

161. *See supra* Part I.B.

162. *See* DaCosta, *supra* note 37, (discussing the downfalls of industry-specific whistleblower legislation); Trystan N. Phifer O'Leary, *Silencing the Whistleblower: The Gap Between Federal and State Retaliatory Discharge Laws*, 85 Iowa L. Rev. 663, 693 (2000) (discussing the inconsistencies of state and federal whistleblowing statutes).

163. *Id.*

the EU Whistleblowing Directive. For example, a comprehensive U.S. federal whistleblowing statute should include provisions that are binding on both public and private sectors, regardless of industry. Whistleblowing is obviously not limited to only the private sector or only the public sector. It occurs everywhere.[164] Excluding any particular sector from the robust protections that a whistleblowing statute provides clearly excludes an entire subset of individuals from seeking redress against retaliation for their reports. There are important public interests that stem from all forms of whistleblowing. Because the areas of potential reporting run the gamut from (e.g., health care, environmental protection, tax, products liability, the corporate sector, and child welfare), essential and important national concerns that affect all people and corners of society are brought to light due to the valuable information that whistleblowers provide.[165]

In addition, public and private sector whistleblowing helps governments discover and investigate wrongdoing and violations of the law that they otherwise would not have known about. As the SEC has expressed, "[a]ssistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the [agency]" and can help the government "identify possible fraud and other violations much earlier than might otherwise have been possible."[166] Similarly, the Office of Inspector General of the U.S. Department of Health and Human Services notes that "[w]histleblower disclosures by [Health and Human Services] employees can save lives as well as billions of taxpayer dollars" and highlights the fact that "whistleblowers root out waste, fraud, and abuse and protect public health and safety."[167] Scientific studies have also confirmed the enormous benefit to societal and public interests that whistleblowers bring forward—one of which found that

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164. Kent D. Strader, Comment, *Counterclaims Against Whistleblowers: Should Counterclaims Against Qui Tam Plaintiffs Be Allowed in False Claims Act Cases?*, 62 U. Cin. L. Rev. 713, 716–17 (1993).

165. *See* George H. Brown, *Financial Institution Lawyers As Quasi-Public Enforcers*, 7 Geo. J. Leg. Ethics 637, 698 (1994) (discussing the important public interests met through independent reporting).

166. U.S. Sec & Exch. Comm'n, Whistleblower Program, www.sec.gov/whistleblower [https://web.archive.org/web/20240319044021/https://www.sec.gov/whistleblower].

167. Off. Inspector General, U.S. Dep't Health & Hum. Servs., Whistleblower Protection Coordinator, oig.hhs.gov/fraud/whistleblower/ (last visited July 3, 2025).

whistleblowers detected 43% of instances of fraud in the corporate sector. By contrast, corporate controls were responsible for 34%, and law enforcement officers were only responsible for 3% of fraud detection.[168] Therefore, the government relies heavily on whistleblowers of all types to bring information about wrongdoing forward. In turn, the government should provide the types of comprehensive retaliation protection that whistleblowers need.

Apart from facilitating governmental interests, whistleblowers in the private sector also bring enormous benefits to the organization itself. Whistleblowers often raise concerns in early stages that may otherwise be overlooked and then, once reported, reveal a larger problem that, if addressed, poses numerous organizational benefits such as avoiding negative press, investigations, penalties, fines, prosecutions, or dissolution.[169] In this way, the various benefits that whistleblowers bring by reporting within organizations serve to "enhance the transparency, integrity and resilience of global markets as well as government," promoting integrity and healthy governance both within organizations and beyond.[170] In addition to ensuring that whistleblowers in both the private and public sectors are protected, U.S. whistleblowing law should include the expansive provisions of the EU Whistleblowing Directive, specifically that relate to protecting both internal and external whistleblowers. A very notable aspect of the EU Whistleblowing Directive is that it also protects third parties connected to the whistleblower including colleagues and relatives of the whistleblower, as well as any legal entities that the whistleblower "own, work for or are otherwise connected with in a work-related context"[166] from retaliation. Whistleblowers' friends and families often also suffer from the devastating consequences that the whistleblower has experienced. Research is clear that whistleblowers who experience retaliation and other negative consequences for their actions experience an overflow of these

168. Nat'l Whistleblowers Ctr., Proven Effectiveness of Whistleblowers, www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf.

169. *See* Bishara, Callahan & Dworkin, *supra* note 21, at 40–51, 76–82; *see also* Christine Parker, Suzanne M. Le Mire & Anita Mackay, *Lawyers, Confidentiality and Whistleblowing: Lessons from the McCabe Tobacco Litigation*, 40 Melb. U. L. Rev. 999, 1010 (2017) (discussing the benefits of internal whistleblowing).

170. Parker, Le Mire & Mackay, *supra* note 169.

problems into their personal life, which creates significant problems with spouses, partners, and children that often lead to family turmoil and tragically sometimes suicide.[171] The duration of whistleblowing cases can last years and lead to very harsh consequences for those closest to the whistleblower, including moves, changes in lifestyle, marital stress, loss of savings, and health problems.[172] Therefore, a legislative acknowledgment of the types of secondary retaliation that family members and friends of whistleblowers suffer would make a significant impact in the United States.

In addition, a comprehensive U.S. whistleblowing statute should provide clarity as to the lawfulness of a whistleblower's use of internal company documents in terms of their claims, as the EU Whistleblowing Directive currently makes clear. Too often, employers retaliate against whistleblowers through litigation, claiming that they have violated company policy or a non-disclosure agreement in relying on or transmitting internal documents in support of their reports.[173] When the law lacks specific guidance or metrics about the lawfulness of a whistleblower's reliance on documentary evidence of the wrongdoing, the whistleblower is left to parse through an extremely confusing web of screening documents, amplified by time pressure and stress, in determining what may be appropriate or not to avoid a potential counterclaim by the employer.[174] This kind of confusion and difficulty often has the effect of prompting the would-be whistleblower into silence. "[T]he prospect of potentially prevailing against a counterclaim, requiring a nonlawyer

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171. Peter G. van der Velden, Mauro Pecoraro, Mijke S. Houwerzijl & Erik van der Meulen, *Mental Health Problems Among Whistleblowers: A Comparative Study*, 122 PSYCH. REPS. 632, 633 (2019) (discussing various studies of whistleblowing and the negative consequences that result therefrom); *see also* Clare Tilton, *Women and Whistleblowing: Exploring Gender Effects in Policy Design*, 35 COLUM. J. GENDER & L. 338, 343 (2018) ("The cost of whistleblowing can reach to family strife and long-term financial well-being. The risk of psychological consequences and anxieties that come with reporting should not be understated: whistleblowers as a whole tend to suffer from alcoholism and depression.").

172. K. Jean Lennane, *"Whistleblowing": A Health Issue*, 307 BRIT. MED. J. 667, 668 (1993).

173. *See* Peter S. Menell, *Tailoring A Public Policy Exception to Trade Secret Protection*, 105 CALIF. L. REV. 1, 34 (2017) (discussing litigation involving whistleblowers who are accused of disclosing the contents of internal company documents).

174. *Id.* at 34.

[whistleblower] to establish that documents are 'relevant' . . . is little solace to a person contemplating reporting wrongdoing to the government. Having to respond to discovery, pay a lawyer to do so, and face possible liability would be enough to discourage many whistleblowers from reporting at all."[175]

Given the hurdles and risks involved with producing documentary evidence in support of their claims, it is no wonder that whistleblowers would be dissuaded from reporting altogether. At the same time, the more detailed, comprehensive, and specific the information that the whistleblower provides, the more they have a chance of being believed and supported.[176] It is important to note that the level and detail of the whistleblower's documentary evidence play a crucial role in determining whether the whistleblower had a "reasonable belief" that a violation of the law was occurring.[177] The "reasonable belief" standard is the customary and gold standard provision in whistleblower legislation, which states that whistleblowers are protected from retaliation for their reports as long as they had a reasonable belief that wrongdoing was occurring, even if it turns out that the whistleblower was "wrong" and that no wrongdoing or violation of the law was actually present.

The reasonable belief standard contains both a subjective and an objective component.[178] Subjectively, the whistleblower must have an actual and good-faith belief that the employer has committed wrongdoing without presenting any false information. Additionally, the whistleblower must have an objective belief that a reasonable person in the same position, in terms of experience, background, professional training, and access to information, would have believed there was wrongdoing under similar circumstances.[179] If, after looking into the whistleblower's

175. *Id.* at 34.

176. *See* Dennis J. Ventry, Jr., *Stitches for Snitches: Lawyers As Whistleblowers*, 50 U. C. Davis L. Rev. 1455, 1481 (2017) (discussing how the more detailed and specific the whistleblower provides the better, especially in terms of receiving bounty rewards).

177. *See* Robert G. Vaughn, *America's First Comprehensive Statute Protecting Corporate Whistleblowers*, 57 Admin. L. Rev. 1, 64 (2005).

178. Pacella, *supra* note 108, at 307.

179. Vaughn, *supra* note 177, at 16–19. Importantly, the subjective component of the reasonable belief standard differs from a whistleblower's motive to report, as a whistleblower with a subjective, good faith belief may have varying motives to report. *See id.*; *see also* Lockheed Martin Corp. v. Admin. Review Bd., U.S. Dep't of Labor, 717 F.3d 1121, 1132 (10th Cir. 2013) ("Objective reasonableness is evaluated based on the knowledge available to a reasonable person

information, it turns out that the employer has not actually violated the law, whistleblowers will not be barred from receiving legal protection if they have been retaliated against for their reporting, as long as the reasonable belief standard is met.[180] Numerous courts have interpreted the anti-retaliation provisions of several federal whistleblowing statutes to contain the reasonable belief standard as a metric for judging whether the whistleblower is eligible for protection, even in statutes that do not explicitly articulate such a showing.[181]

Given the hugely important nature of a whistleblower's need to prove the reasonable belief standard to receive protections under the law when the whistleblower is retaliated against, one can see how much documentary evidence plays a role. The current state of U.S. whistleblowing law does not provide clear guidance or articulation of how whistleblowers may provide such documents. Following the lead of the EU Whistleblowing Directive, which so thoroughly addresses this very issue, U.S. whistleblowing legislation should be amended to ensure the inclusion of this information.

There is one provision, however, that is not present in the EU Whistleblowing Directive that should form the basis of an ideal U.S. law for whistleblowers: the inclusion of a bounty reward system. Using the Dodd-Frank Act as an example, data clearly reveal that successful investigations and enforcement actions against those violating the law are extremely effective when a bounty reward system is made available.[182] Since this bounty reward program began in 2011, the SEC has awarded

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in the same factual circumstances with the same training and experience as the aggrieved employee.") (citation omitted).

180. Wiest v. Lynch, 710 F.3d 121, 132–33 (3d Cir. 2013).

181. *See, e.g.*, United States *ex rel.* Absher, et al. v. Momence Meadows Nursing Ctr., Inc., 764 F.3d 699, 715 (7th Cir. 2014) (interpreting the retaliation provisions of the False Claims Act to protect whistleblowers who possess a reasonable belief of fraud against the government); Fanslow v. Chicago Mfg. Ctr., 384 F.3d 469, 480 (7th Cir. 2004) (joining in the finding of "several of [its] sister circuits" that the subjective and objective "reasonable belief test is appropriate in evaluating whether whistleblowers are protected under the False Claims Act); Knox v. U.S. Dep't of Labor, 232 F. App'x 255, 258–59 (4th Cir. 2007) (finding that the antiretaliation provisions of the Clean Air Act as requiring a "reasonable belief").

182. *See* U.S. Sec. & Exch. Comm'n, 2024 Annual Report of Dodd-Frank Whistleblower Program 1, www.sec.gov/files/fy24-annual-whistleblower-report.pdf (discussing the success of the program in 2024 and since its inception).

over $2.2 billion to over four hundred individual whistleblowers. In 2024 alone, the SEC awarded nearly $255 million, the third-highest annual amount in the history of the program.[183] In 2023, the SEC received more than 18,000 whistleblower tips, which is nearly a fifty percent increase over the previous year and a record number of applications for awards.[184] As the SEC has noted, the increase in public participation in the Dodd-Frank Act's bounty reward program has occurred as the SEC's Division of Enforcement has brought more and more enforcement actions against companies and persons who impede whistleblowers from making reports to the SEC or who retaliate against whistleblowers.[185] Thus, a bounty reward program serves an important purpose in creating incentives to encourage whistleblowers to make the difficult decision of reporting.

B. *Creation of a Transatlantic Alliance*

As the United States and the European Union have each demonstrated through targeted legislation centered on the topic, whistleblowing is arguably an area of shared priority. As the EU Whistleblowing Directive continues to be implemented in each EU Member State and integrated into the everyday functioning of businesses and organizations, the United States continuously works to do the same with its existing whistleblowing laws and policies, as there is still an uphill battle among American businesses and society in accepting whistleblowers without negatively labeling them with words like "snitch" or "rat."[186] As a result, it would benefit the two governments to join forces and form a transatlantic alliance or partnership that could offer a powerhouse of potential in facilitating cooperation and sharing resources as the United States works on improving its whistleblowing law, the European Union strives to fully enforce its new provisions, and as the two aim to make the perception of whistleblowers positive in all respects, with each bearing fruit from the collective knowledge, expertise, and experiences of the other.

Similar collaborations that exist in other contexts could serve as an ideal model for this new alliance. One example of

183. *Id.* ("These totals include a single award for almost $279 million").
184. *Id.*
185. *Id.*
186. Vega, *supra* note 29, at 491.

such a partnership is the Partnership for Transatlantic Energy Cooperation (P-TEC), in which the U.S. Department of Energy's Office of International Affairs coordinates an international platform "to provide policymakers and civil-society stakeholders within Eastern and Central Europe with the resources and technical tools to build affordable, reliable, and secure energy systems."[187] P-TEC consists of the United States, twenty-four European countries, and the European Union, and works on technical collaboration in several crucial areas pertaining to energy, including deploying energy efficiency and clean energy; supporting best practices in energy cybersecurity; promoting new capital investments in crucial energy infrastructure; working on the areas of climate impact prediction, risk mapping, and adaptation planning; and providing analysis and vulnerability assessments for systems of electricity and gas transmission.[188] P-TEC operates by gathering "ministerial delegations" and private sector leaders regionally and in the United States to discuss and collaborate on these issues, with the inaugural P-TEC Ministerial meeting having convened in October of 2019, where the framework was established for an initiative supporting the energy infrastructure, interconnection, and security goals of the Eastern and Central European region.[189]

Similarly, an entity focused solely on whistleblowing with representatives from the United States and the European Union could be established to further the public policy goals behind whistleblowing and join forces to establish a partnership on

187. *The Partnership for Transatlantic Energy Cooperation (P-TEC)*, U.S. DEP'T OF ENERGY, www.energy.gov/ia/partnership-transatlantic-energy-cooperation-p-tec.

188. *The Partnership for Transatlantic Energy and Climate Cooperation (P-TECC)*, U.S. DEP'T OF ENERGY, https://web.archive.org/web/20230315014301/https://www.energy.gov/ia/partnership-transatlantic-energy-and-climate-cooperation-p-tecc. P-TEC includes the following countries and organizations: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, the European Union, Georgia, Germany, Greece, Hungary, Kosovo, Latvia, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia, Ukraine, and the United States. *Id.*

189. *Id.*; *Partnership for Transatlantic Energy and Climate Cooperation (P-TECC) Business Forum and Ministerial: Live from Warsaw*, ATLANTIC COUNCIL (Sept. 22, 2021, 2:30 AM), www.atlanticcouncil.org/event/partnership-for-transatlantic-energy-and-climate-cooperation-p-tecc-business-forum-and-ministerial-live-from-warsaw/.Ministers and other senior representatives from eighteen Central and Eastern European countries participated, as did the European Commission. *The Partnership for Transatlantic Energy and Climate Cooperation (P-TECC)*, *supra* note 188.

this very important tool against fraud, wrongdoing, and other violations of the law. Just as the U.S. Department of Energy leads the efforts for P-TEC, two federal agencies, the SEC and OSHA, could fill a similar role for a transatlantic whistleblowing alliance and work together to form a collaboration, given that they are both heavily involved in administering important whistleblowing programs. First, OSHA already manages whistleblower retaliation complaints under Sarbanes-Oxley's program, as discussed earlier in this Article, as part of its overall mission of protecting employees.[190] While the congressional goal in creating OSHA in 1970 was to ensure safe and healthy working conditions for workers by establishing and enforcing standards to this effect, as well as providing training, education, and outreach, Congress also placed the agency in charge of Sarbanes-Oxley whistleblower complaints when the statute was enacted in 2002.[191]

During the rulemaking process of OSHA's implementation of the Sarbanes-Oxley whistleblower program, some public comments were concerned about OSHA's suitability in overseeing whistleblower complaints submitted pursuant to Sarbanes-Oxley, since the legislation is notably different from other existing OSHA-administered whistleblowing laws[192] Indeed, there have been studies finding that OSHA has had relatively little success for whistleblowers seeking redress under Sarbanes-Oxley for a number of reasons, including strict interpretations of Sarbanes-Oxley's legal requirements, and budgetary and personal restraints on the part of the agency.[193] For these reasons, an inter-agency collaboration with the SEC to represent the United States in a transatlantic whistleblowing alliance would be more ideal than one agency like OSHA handling it alone.

It has been suggested that the designation of OSHA to handle Sarbanes-Oxley whistleblower cases is more a reflection of its "procedural expertise" to address whistleblower claims in a variety of employee-protective statutes than in its expertise in

190. *See supra* Part I.B.

191. *Whistleblower Protections,* U.S. Dep't Lab., www.dol.gov/general/topics/whistleblower (last visited June 7, 2025); *see also* Wolters Kluwer, Employment Safety and Health Guide ¶ 14669 (2015).

192. Employment Safety and Health Guide, *supra* note 191.

193. For a robust analysis of the success level of OSHA in Sarbanes-Oxley whistleblower cases, *see* Richard E. Moberly, *Unfulfilled Expectations: An Empirical Analysis of Why Sarbanes-Oxley Whistleblowers Rarely Win*, 49 Wm. & Mary L. Rev. 65 (2007).

the "substantive criminal frauds and the violations" that involve SEC rules, regulations, and federal securities laws.[194] Therefore, the SEC possesses expertise in the very subject matter for which whistleblowers are largely reporting. The Dodd-Frank Act's whistleblower program, which the SEC administers, has been deemed to be the most significant of the federal whistleblower programs in existence and has rewarded hundreds of whistleblowers with billions of dollars since the program began in 2011.[195] The SEC's enforcement division evaluates all whistleblower tips for escalation within the agency if related to a particular expertise and for "specific, credible, and timely [information], and that [is] accompanied by corroborating documentary evidence."[196] Within its enforcement division, the SEC has a designated Office of the Whistleblower, which was established to administer the Dodd-Frank Act's whistleblower program, and has proven invaluable not only in having a sole source to manage whistleblower complaints but also to serve as a means of accountability for businesses and organizations to comply with the regulations and anti-retaliation provisions.[197] This office also engages with the public to educate would-be whistleblowers and organizations about the whistleblower program, protections, and other information.[198] Thus, it helps play

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194. Allen B. Roberts, Epstein Becker & Green P.C., *Sarbanes-Oxley and the Whistleblower,* Financier Worldwide, Aug. 2006; *see also* Doe v. SEC, 28 F.4th 1306, 1315 (D.C. Cir. 2022) (quoting Kisor v. Wilkie, 588 U.S. 558, 578 (2019)) ("The SEC's interpretation of its whistleblower award program regulations undoubtedly implicates its 'policy expertise.'"); Kansas Gas & Elec. Co. v. Brock, 780 F.2d 1505, 1508–10 (10th Cir. 1985) (noting that the Department of Labor administers whistleblower complaints in various employment-related contexts, even in areas where another federal agency possesses the subject matter expertise on that context).

195. J. Gregory Deis et al., *US Department of Justice Announces Sprint Towards New Whistleblower Reward Program*, Mayer Brown LLP (Mar. 8, 2024), www.mayerbrown.com/en/insights/publications/2024/03/us-department-of-justice-announces-sprint-towards-new-whistleblower-reward-program.

196. Usha R. Rodrigues, *Optimizing Whistleblowing*, 94 Temp. L. Rev. 255, 281 (2022).

197. *Information About Submitting a Tip*, *supra* note 110; *see also* Zachary J. Gregoricus, *Whistleblowing from the Bench*, 51 New Eng. L. Rev. 155, 168–69, 177 (2016) (noting that Dodd-Frank "struck fear into the hearts of Wall Street banks, in large part due to the Office of the Whistleblower and the heightened potential for litigation with the SEC.").

198. *See* Sean Griffith et al., *What Would We Do Without Them: Whistleblowers in the Era of Sarbanes-Oxley and Dodd-Frank*, 23 Fordham J. Corp. & Fin. L. 379, 379 n.ii (2018); *see also* Baer, *supra* note 52, at 2224 (discussing the public outreach aspects of the SEC Office of the Whistleblower).

a role in improving organizational culture to understand the true value that whistleblowers bring to the forefront.

The vast range of resources that the SEC and OSHA can offer together, both procedurally and substantively, would be an ideal fit for representation in a transatlantic whistleblowing alliance. The type of collaboration and strengthening of resources that such a partnership would bring is likely to facilitate the smooth progression of the whistleblowing programs that are new to the European Union by integrating whistleblowers more and more into the norm of business and society, bringing a greater sense of acceptance that could also help with some of the cultural problems associated with whistleblowing that, as discussed earlier, countries of the European Union with histories of totalitarian governments are facing.[199] While U.S. workers still face many instances of negative connotations and obviously retaliation,[200] progress has been made to demonstrate a greater acceptance of and appreciation for whistleblowers.[201] Collaboration between the two sides of the Atlantic, as they continue to work on shielding whistleblowers from unjustified harm, could only serve to benefit all involved.

Conclusion

The importance of whistleblowing to a functional and effective internal compliance system cannot be overstated. Whistleblowers have played critical roles in detecting and bringing to light some of the most notable cases of fraud and

199. *See supra* Part II.D.

200. Leora F. Eisenstadt & Jennifer M. Pacella, *Whistleblowers Need Not Apply*, 55 Am. Bus. L.J. 665, 671 (2018) (discussing the ways in which whistleblowers are still commonly targets of retaliation of all forms); *see also* Deborah A. DeMott, *Whistleblowers: Implications for Corporate Governance*, 98 Wash. U. L. Rev. 1645, 1656 (2021) (discussing the various negative connotations pertaining to whistleblowers that are common in society).

201. Rodrigues, *supra* note 196, at 265 (acknowledging "the incentives for meritorious whistleblowing" and ways in which the whistleblower may be considered to be a hero "acting courageously because of an inner moral compass that compels her to speak out in the face of wrongdoing"); *see also* Joel D. Hesch, *Whistleblower Rights and Protections: Critiquing Federal Whistleblower Laws and Recommending Filling in Missing Pieces to Form A Beautiful Patchwork Quilt*, 6 Liberty U. L. Rev. 51, 53–54 (2011) (noting that anti-retaliation laws for whistleblowers have largely come about due to a "recognition of the valuable assistance of whistleblowers").

wrongdoing in recent decades.[202] Whistleblowing has this potential for impact around the globe. No matter the country and no matter the circumstance, a voice that is brave enough to raise concerns in the face of complacency, denial, or ill intent is worthy of attention and protection, not only by the law but by society as well.

The United States has a federal patchwork system of whistleblowing protections that differ by industry, by type of person reporting, by the types of monetary rewards available for whistleblowers, and by the mechanism for redress in the case of retaliation. As much progress has been made domestically with respect to valuing the contributions of whistleblowers and adopting legislation for these purposes, whistleblowing law in the United States still leaves much to be desired.[203] Across the pond, the European Union has made major developments in the area of whistleblowing law, as the EU Whistleblowing Directive required each and every EU Member State to transpose into their respective national laws the provisions and mandates of the directive, which broadly and strongly protect all types of whistleblowers across all sectors.[204]

The provisions of the EU Whistleblowing Directive, in many ways, exceed those of their current counterparts in U.S. law. While the actual legislation involved with the EU Whistleblowing Directive continues to be fully implemented and enforced in each EU Member State, it is incumbent upon those nations, and the organizations and businesses that comprise them, to facilitate a culture that is conducive to appreciating whistleblowers and ensuring that the law is effectively followed. This task may prove to be a challenge in the countries of the European Union that have histories of totalitarian government and long-held notions of how one who "reports" on another should be viewed in society.[205]

This Article has explored the key components of major whistleblowing legislation in the United States, conducting a comparative analysis of the EU Whistleblowing Directive. It has argued that the EU Whistleblowing Directive may serve as a model on which to amend the current weak aspects of

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202. *See Why Whistleblowing Works*, NAT'L WHISTLEBLOWER CTR., www.whistleblowers.org/why-whistleblowing-works/ (last visited July 7, 2025).

203. *See supra* Part III.A.

204. *See supra* Part I.C.

205. *See supra* Part II.D.

whistleblowing legislation in the United States to establish a comprehensive federal whistleblowing law that is inclusive of retaliation protections for all types of whistleblowers and all the ways in which they have chosen to report.[206] This Article also proposes the creation of a novel transatlantic alliance or partnership in which the two forces on each side of the Atlantic may collaborate and share resources to work towards the collective goal of raising and improving cultural awareness of whistleblowing and continuing to improve the laws that govern this important phenomenon.[207] As worldwide attention to whistleblowing and the value that whistleblowers bring continues to take shape, the opportunity for collaboration, shared resources, and education among various nations is paramount to moving towards a society where all whistleblowers are fully accepted as stewards of healthy organizational and corporate governance without fear or risk of retaliation for their efforts.

206. *See supra* Part III.A.
207. *See supra* Part III.B.