

Addressing the fear of retaliation

With whistleblowing on the decline, could potential whistleblowers be afraid of what will happen after they speak up?

When former Facebook employee Frances Haugen earlier this year accused the social media platform of prioritising profits by allowing disinformation campaigns to fester unopposed on the site, she joined a growing band of whistleblowers that have helped shine a light on corporate malpractice, from incidents of unethical behaviour to outright corruption and fraud. Haugen's case was particularly encouraging for would-be whistleblowers; instead of being vilified, she has been lauded for her efforts, especially in the media.

Yet while some regions and sectors have seen whistleblowing reports rise since the start of the pandemic—the US Securities and Exchange Commission, for instance, received its highest number of whistleblower tips on record in 2020—on a global level, reporting declined last year for the first time since Navex started compiling its annual benchmark report.

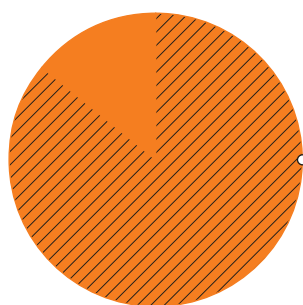
One reason for this: many potential whistleblowers are still reluctant to speak out, in large part because they are worried there will be a heavy personal price to pay.

49%

said fear of retaliation is the biggest barrier to reporting



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86%

of European business leaders believe that people who highlight potential breaches of law in a workplace context should be legally protected from retaliation or detrimental treatment

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17%

of European organisations don't accept or investigate misconduct reports that are filed by anonymous sources



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What is fear of retaliation and how prevalent is this issue?

Many would-be whistleblowers who have witnessed misconduct are hesitant to report

This is often because they fear retaliation from their employer or colleagues—be it dismissal, demotion, bullying, loss of benefits or other forms of harassment and intimidation.

According to Navex’s Whistleblowing in Europe survey, almost half of respondents (49%) said fear of retaliation is the biggest barrier to reporting illegal or unethical behaviour in the workplace. Those fears mean corporate malfeasance can potentially continue without detection, yet those worries may be misplaced. Some 86% of European business leaders believe that people who highlight potential breaches of law in the workplace context should be legally protected from retaliation or detrimental treatment.

Having whistleblower protections in place can give employees the confidence to speak up without fear of retaliation, ensuring any unethical activity is flagged and dealt with appropriately, as well as putting in place preventative measures to stop such incidents recurring.

Fewer than half of European organisations have a formal anti-retaliation policy

Which of the following measures does your organisation have in place to protect employees from retaliation if they report suspected misconduct?

A
Protecting confidentiality of reporters
56%

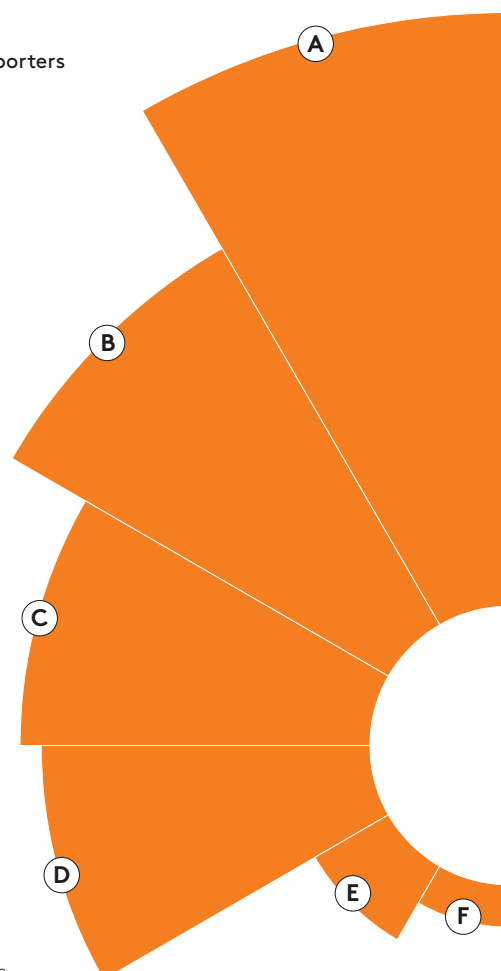
B
Formal anti-retaliation policy
41%

C
Sanctions for retaliatory behaviour
33%

D
Tracking potential retaliation against reporter
31%

E
Not sure
8%

F
N/A: No measures in particular
4%



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Why are organisations still failing to address this issue?

Lack of relevant policies, procedures and technology all play a role

Organisations need to foster an environment where whistleblowers feel confident about coming forward to report misconduct, yet many lack the relevant policies, procedures and technology to make that happen. For example, fewer than a third of organisations (31%) track whether retaliation occurs after a whistleblowing report has been made, according to Navex's survey.

Furthermore, only 33% of organisations have a policy or process in place to sanction those who retaliate against a whistleblower, further discouraging people from speaking out.

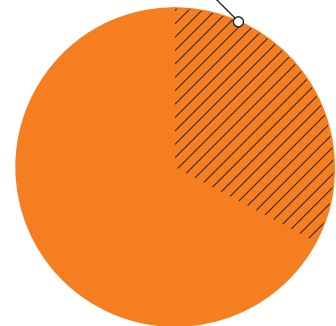
Some organisations may also lack safe reporting channels to log complaints in the first place, meaning employees are unsure of where to turn to raise concerns. Others may have ineffective systems or poor communication standards, where a lack of appropriate feedback can give whistleblowers the impression their reports are being ignored.

Some large organisations have in the past fought back against allegations made by whistleblowers, sometimes attempting to discredit the individual who has made the claim or otherwise seeking to save their reputations rather than address the issues raised.

Only

33%

of organisations have a policy or process in place to sanction those who retaliate

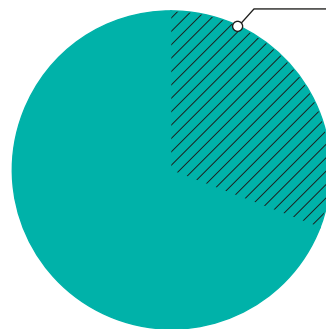


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Only

31%

of organisations track whether retaliation occurs after a report is made



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How can legislation help tackle the problem?

The EU directive seeks to safeguard whistleblowers, but it will be up to member states to decide whether to penalise those who retaliate against protected parties

The European Union has already recognised the importance of protecting whistleblowers. It introduced its Whistleblowing Directive in 2019, with EU member states required to implement the directive into their national laws by 17th December 2021.

The directive doesn't just protect current employees from retaliation, it also seeks to safeguard former employees, the self-employed, shareholders, board members and a host of other parties including contractors and suppliers who might have witnessed illegal or unethical behaviour that needs calling out.

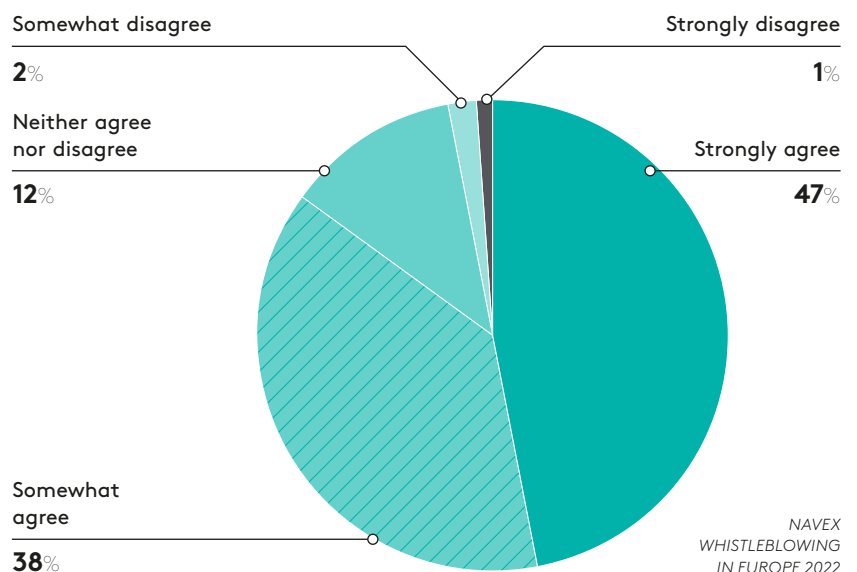
While the directive seeks to safeguard whistleblowers by applying a set of minimum standards across the EU, it is up to individual member states if they want to go beyond those standards and strengthen protections for those who blow the whistle. For instance, it will be up to member states to decide exactly what measures or consequences will be in place to penalise those who retaliate against protected parties.

"By itself the directive does not really address the fear of retaliation, but what it does do is help to drive a change in culture by getting organisations focused on what they actually need to do in order to protect people who speak up," says Georgina Halford-Hall, CEO at WhistleblowersUK. "There are 27 different countries in the EU, each with their own very unique culture, so it's going to be difficult to implement. What we're doing in the UK is working on new legislation for the Office

of the Whistleblower that puts much more emphasis on doing the right thing as well as addressing organisations that do the wrong thing. It will ensure that investigations of allegations are proper investigations by mandating how they happen and how you report it, importantly this legislation will include very tangible accountability."

The vast majority agree that whistleblowers should be legally protected from retaliation

People who highlight potential breaches of law in a workplace context should be legally protected from retaliation or detrimental treatment



What can organisations do?

Organisations must put in place strategies and processes to monitor for retaliation

Take Serco Group, for example. It allows staff to raise retaliation issues through its 'speak up' line which are then recorded on Navex's EthicsPoint case management system, says Robert Smith, director for compliance and ethics at Serco.

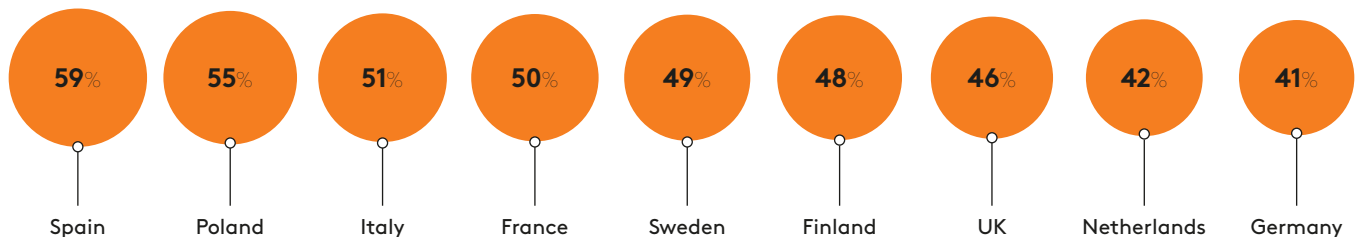
In addition, Serco sends out a quarterly questionnaire to a random selection of individuals who have raised issues and whose cases have been closed within the past three months, asking them if they are aware of the company's retaliation policy and whether they have any additional comments. That approach is designed to avoid asking leading questions, which can sometimes yield reports of incidents that aren't actually cases of retaliation. Serco also uses its employee engagement survey to gauge whether people are confident enough to report unethical behaviour without fear of retaliation.

"That allows us to monitor the level of perceived trust in the system and clearly if it is very low then one of the potential reasons for that is a fear of retaliation, and that fear would only come from a situation of things they may have seen or heard," says Smith.

The International Organisation for Standardisation has also published guidance on setting up a whistleblowing management system—ISO37002—which recommends that organisations clearly communicate to employees how to report wrongdoing and then to keep whistleblowers informed at each stage of the process. Integrating the reporting process across relevant departments also creates positive feedback loops that can help identify risks of retaliation early in the reporting process, potentially preventing such conduct from taking place.

In every country surveyed, fear of retaliation was the top reason why whistleblowers do not report wrongdoing

Percentage of senior business leaders who gave 'fear of retaliation' as a main reason why employees in their organisation might not report any observed instances of misconduct



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How can technology help tackle the problem?

Technology can also play a vital role in identifying potential cases of retaliation

Serco, for instance, takes data from its EthicsPoint system and combines that with its HR platform to monitor for potential incidents. If somebody has reported an issue and that person is then later subject to disciplinary action, the ethics and compliance team are alerted and can proactively investigate if it involves retaliation.

"It's about looking at different data points and considering if something is worth exploring," says Smith. "It may be that the disciplinary action has nothing to do with the case they raised, but it allows us to see if there is potentially an issue there."

The ability to report anonymously can also encourage people to speak up, with technology also potentially playing a role here too. In the past, anonymous reports were difficult to follow up on, but using technology, encrypted communication channels mean investigators can now talk to a whistleblower without the latter having to reveal their identity.

According to the survey, 38% of respondents believe anonymous reporting is a top three factor for building employee trust and encouraging whistleblowing, but almost a fifth of European organisations (17%) don't accept or investigate misconduct reports that are filed by anonymous sources. However, a majority of respondents believe that named sources are either equally or more valid, credible and actionable than anonymous reports.

Only

70%

of European organisations accept and investigate reports of misconduct that come from anonymous, rather than named, sources

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38%

believe 'enabling people to report anonymously' is a top three factor for building employee trust and encouraging reporting in a whistleblowing program

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How do named sources compare to anonymous ones?

European business leaders' perceptions of anonymous whistleblowing reports compared with named ones

49% say they're equally valid

40% say they're more valid

46% say they're equally credible

44% say they're more credible

47% say they're equally actionable

42% say they're more actionable

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Key takeaways

- ① Fear of retaliation and the impact on a person's career is one of the biggest barriers to potentially reporting unethical or illegal behaviour
- ② Organisations lack policies or processes to sanction those who retaliate while few organisations have mechanisms in place to track if retaliation occurs after a report is filed
- ③ The EU's Whistleblowing Directive is imposing a minimum standard for whistleblowing protections, though it will be up to individual member states to decide on the scale of punishment for those who retaliate against whistleblowers
- ④ Organisations must put policies, procedures and technology in place to monitor for retaliation and enable anonymous reporting to encourage people to speak out

Next steps?

Visit [Navex's Year of the Whistleblower content hub](#) to find out more about how your organisation can protect whistleblowers and ease their fears of retaliation.