



March 22, 2021

Dear Madam or Sir:

**Re: Supplemental Filing -- Urgent Need to Include Climate Related Disclosures as a Protected Activity**

[Whistleblowing International](#), the [National Whistleblower Center](#), the [European Center for Whistleblower Rights](#), and the international whistleblower law firm [Kohn, Kohn & Colapinto, LLP](#)<sup>1</sup> would like to start by expressing our gratitude for your work on behalf of whistleblowers and for the seriousness with which France is taking the transposition of the European Union's [Directive \(EU\) 2019/1937 on the Protection of Persons Who Report Breaches of Union Law](#) (hereinafter, the "Directive").

The debate and final approval of a whistleblower law pursuant to the requirements of the Directive provides a unique opportunity for EU nations to make sure that their whistleblower laws are robust and effective and will encourage the disclosure of serious crimes and regulatory violations that could harm both nations and their citizens. For this reason, we write today to formally request that France take into account the grave threat posed by climate change, which European whistleblowers could serve a key role in mitigating.

Far from being a purely environmental or isolated issue, [climate change is the greatest current threat to global security](#). Indeed, its effects are already being felt [in Europe](#) and [around the world](#). And as scientific research develops, we learn more about which [human activities](#) drive the climate crisis and how to best mitigate them.

**To address the climate crisis, it is imperative that all EU nations, including France, include whistleblowing on violations of laws or policies related to climate change as protected activity in their national legislation transposing the Directive.**

---

<sup>1</sup> The authors of these recommendations are recognized international experts in the area of whistleblowing over 35 years of experience representing whistleblowers, drafting effective whistleblower laws, teaching whistleblower law classes at accredited law schools, and working extensively overseas with international whistleblowers and government officials interested in implementing effective whistleblower programs in Europe and elsewhere. They have written more books and articles on the topic of whistleblower law than any other scholars worldwide. They also have represented (or are currently representing) whistleblowers on every continent (except Antarctica), including non-U.S. whistleblowers from numerous European countries, such as France, Greece, Germany, Russia, Serbia, Spain, Switzerland, and the United Kingdom. Current cases include representing European whistleblowers in reporting money laundering schemes (in banks located in Estonia, Denmark, and Germany) and Foreign Corrupt Practices Act violations (including the Greek whistleblowers whose disclosures recently triggered a \$300 million sanction against a Swiss company for paying bribes in an EU country).

Moreover, such legislation must recognize that climate change issues impact a wide spectrum of laws, rules, and regulations, and that these legal obligations are evolving in nature. For example, the EU has announced its intention to overhaul its [climate-related disclosure requirement this year](#) and has already created new [sustainable finance disclosure requirements](#) for investment firms and fund managers. Similarly, the U.S. Securities & Exchange Commission (“SEC”) recently jumped on this bandwagon and issued [a 29-page guidance document](#) that explicitly recognized that climate is not just an environmental issue, but has direct impact on the reporting requirements of publicly traded companies, and the current Acting Chair of the SEC [issued a public statement](#) on February 24, 2021 explaining that the SEC will “enhance” its “focus on climate related” rules. The national legislation transposing the Directive must include provisions flexible enough to unquestionably cover this developing area of law and regulation.

Pursuant to [Article 2 of the Directive](#), the Directive’s provisions are only the “common *minimum* standards for the protection of persons reporting breaches of [EU] law.” (emphasis added). Therefore, France is free to, and may easily add, reporting violations of climate laws and policies as, at minimum, a sub-definition of environmental whistleblowing.<sup>2</sup>

The addition of such language is essential to show France’s commitment to combatting the climate crisis and encouraging climate whistleblowers to come forward and ensure that the evolving and multi-jurisdictional nature of new climate related laws and regulations are clearly covered. Whistleblowers are uniquely positioned to report violations of climate laws and policies. These laws (such as on emissions levels) are often quite technical and subject-matter specific, requiring advanced expertise that insider whistleblowers possess. Moreover, when it comes to illegal activities such as procurement fraud on climate change-related projects or illegal dumping by corporations, only insider whistleblowers can know about and expose the full extent of the wrongdoing.

However, most insiders with knowledge of violations remain silent for fear of reprisal and permanent reputational damage. Ensuring that these individuals know that they are protected by

---

<sup>2</sup> The Directive provides clear support for nations to enact aggressive whistleblower protections for employees who report climate-related violations, including a broad definition of “environment” to include regulatory responses to climate change like those being proposed and implemented by the SEC. *See* Directive Article 2 (Material Scope) and Annex Part I (defining, inter alia, “protection of the environment” to include enumerated EU Directives on the environment and climate). This decision to include environmental offences in the Directive is also elaborated upon in the Preamble ¶ 10:

As regards the area of protection of the environment, evidence-gathering, preventing, detecting and addressing environmental crimes and unlawful conduct remain a challenge and actions in that regard need to be reinforced, as acknowledged by the Commission in its communication of 18 January 2018 entitled ‘EU actions to improve environmental compliance and governance’. Given that before the entry into force of this Directive, the only existing whistleblower protection rules related to environmental protection are provided for in one sectorial act, namely Directive 2013/30/EU of the European Parliament and of the Council, the introduction of such protection is necessary to ensure effective enforcement of the Union environmental acquis, the breaches of which can cause harm to the public interest with possible spillover impacts across national borders. The introduction of such protection is also relevant in cases where unsafe products can cause environmental harm.

France's laws is the first step in emboldening them to step out of the shadows and shed light on illegal activities that threaten the very existence of our habitable world.

If you would like additional information or have any questions, please do not hesitate to contact us at [mworth@whistleblower-rights.org](mailto:mworth@whistleblower-rights.org). We look forward to providing additional assistance or comments as may be appropriate.

Respectfully submitted,

/s/ Mark Worth  
Executive Director  
Whistleblowing International  
European Center for Whistleblower Rights  
Berlin

/s/ John Kostyack  
Executive Director  
National Whistleblower Center  
Washington, D.C. USA

/s/ Stephen M. Kohn, Esq.  
Chairman of the Board of Directors  
National Whistleblower Center  
Washington, D.C. USA

/s/ Maraya Best, Esq.  
Attorney-Advisor, International Human Rights  
Kohn, Kohn & Colapinto, LLP  
Washington, D.C. USA