DOI: https://doi.org/10.30525/2256-0742/2025-11-3-402-408

WHISTLEBLOWER INCENTIVISATION SCHEMES FOR OBLIGED ENTITIES UNDER ANTI-MONEY LAUNDERING LEGISLATION

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Abstract. The relevance of the research is derived from the observation that the imposition of a mandatory obligation on designated entities to undertake due diligence in order to detect and report suspicious transactions and perform other activities under anti-money laundering and terrorist financing legislation without allocating public funds as a basis for these activities of designated entities does not align with the generally accepted principles governing the delegation of governmental functions. The central proposition of the article is that this flaw could be partially remedied by providing monetary incentives to obligated entities by paying them a reward for properly fulfilling their duties to identify suspicious financial transactions and notify the financial intelligence unit about such transactions. The article examines the legislation and experience of the countries with the longest and most meaningful experience of whistleblower incentive schemes: Lithuania, the Republic of Korea, the United States of America and the Canadian province of Ontario. It is evident that there is an emerging trend of widespread and effective utilisation of whistleblowing incentive programmes, which are designed to combat complex financial crimes in specific domains of the public sector. These programmes have been implemented in various sectors, including capital markets, commodity markets, tax debt collection, anti-trust activities, corruption prevention, and the fight against money laundering and terrorism financing. Consequently, the establishment of a framework for remunerating obliged entities in accordance with their satisfactory fulfilment of their duties to identify suspicious financial transactions and notify a financial intelligence unit of them is hereby proposed. The amount of the reward is calculated at between 15 and 30 per cent of the base amount, which may include the sums of funds of illegal origin, penalties for failure to ensure proper organisation and/or conduct of due diligence, or other relevant amounts. The right to receive the reward is to arise at the time of collection/return by government agents of funds of illegal origin in criminal proceedings initiated upon notification by the obligated entity.

Keywords: anti-money laundering and terrorist financing, capital markets and commodity markets, corruption prevention, government functions, rewards for obliged entities, tax debt collection, whistleblowers.

JEL Classification: D73, H20

1. Introduction

The well-established anti-money laundering and anti-terrorist financing framework obliges financial institutions and several other private entities to perform government functions related to the prevention of the financial system being used for money laundering or terrorist financing purposes. However, this solution effectively delegates government functions without providing the necessary financial support to enable obliged entities to perform their duties effectively. The organisation of professional training for employees, risk management and the conduct of meaningful due diligence to detect and report suspicious transactions, as well as the exchange of information with the financial intelligence unit, are carried out exclusively at the expense of the private sector's own resources and under the threat of considerable penalties for violating anti-money laundering

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legislation requirements. This approach is inconsistent with the widely accepted principles and rules for entrusting public functions to private entities. The situation is further exacerbated by the fact that this administrative burden prevents the establishment of business relations with certain clients of financial institutions and other obliged entities, thereby contradicting their business objectives.

Given the impossibility of radically revising the anti-money laundering framework, which is backed by the Financial Action Task Force on Money Laundering and numerous pieces of international legislation, it seems appropriate to consider indirect ways of improving financial support for obliged entities. One potential solution is to offer financial incentives to these entities by remunerating them for their effective fulfilment of their duties to identify suspicious financial transactions and notify the financial intelligence unit about such transactions, attempts to conduct them, and about persons who have or intend to open an account, establish business relationships and/or conduct financial transactions.

2. Theoretical Basis

The article examines the legislation of developed countries with the longest and most meaningful experience of whistleblowing incentive schemes (Lithuania, the Republic of Korea, the United States of America, and the Canadian province of Ontario). The analysis of the legislative material is supported by a review of analytical works which assess the effectiveness of whistleblower incentive schemes in terms of detecting and investigating offences, and eliminating their consequences, based on objective indicators. Particular focus is given to the history of the introduction of these mechanisms in anti-money laundering legislation, as well as the views of the scientific community on this matter.

3. Results

The idea of balancing the delegation of government responsibilities to the private sector with financial incentives is in line with the current trend of encouraging the private sector and civil society to tackle widespread abuses.

In particular, according to Article 26(1) of the Republic of Korea Public Interest Whistleblower Protection Act (2011) where a public interest report leads to a direct recovery of or increase in revenues of the State or a local government through imposition, etc. falling under any of the following subparagraphs, or legal status thereon is confirmed, an internal public interest reporting person may request the Anti-Corruption and Civil Rights Commission to pay him/her monetary rewards:

– The penalty provisions or disposition of notification;
– forfeiture or imposition of additional collection charges;
– imposition of administrative fines or charges for compelling the performance;
– imposition of penalty surcharges, where there is a penalty surcharge system that takes the place of disposition of the cancellation or suspension of approval or permission, etc., including disposition of the cancellation or suspension of approval or permission, etc.;
– other dispositions or decisions made by the court prescribed by Presidential Decree (Republic of Korea public interest whistleblower protection act of 2011).

Furthermore, if a public interest report brings significant property benefits to the state or local government, prevents loss or promotes the public interest on any of the following grounds, the Anti-Corruption and Civil Rights Commission may grant a monetary award or recommend an award in accordance with the Awards and Decorations Act (Article 26-2(1) of the Republic of Korea's 2011 Public Interest Whistleblower Protection Act).

The maximum reward amount is set at 30% of the income received or losses avoided due to the whistleblower's report (Kim & Chang, 2023), with no limit on the maximum reward amount from August 2024 onwards. Between 2011 and 2022, the number of whistleblowers reporting violations in the public sphere in the Republic of Korea increased by a factor of over 10, rising from 292 to 3,266. More recently, in 2023, a whistleblower reported the illegal production of certain medical products by a pharmaceutical company and was awarded 85 million Korean won, equivalent to 10% of the administrative fine imposed on the company (Kim & Chang, 2024).

Similarly, Article 12 of the Republic of Lithuania's Law on the Protection of Whistleblowers states that whistleblowers who provide valuable information on breaches to a competent authority may receive remuneration under the conditions and in accordance with the procedure set out by the government. A decision on remuneration to a whistleblower for valuable information shall be taken, remuneration shall be calculated and paid in compliance with the following principles:
(1) The whistleblower may be remunerated for information on a breach, irrespective of the type or character of the breach;
(2) the reward to the informant shall be proportional to the damage that has been caused or could have been caused as a result of the violation, if it can be calculated;
(3) the maximal amount of remuneration to the whistleblower is not set;

(4) the remuneration to the whistleblower is not linked to an effective court judgment (Lithuania's Law on the Protection of Whistleblowers of 2018).

An examination of the implementation of these legislative provisions reveals that, according to statistical data provided by the Lithuanian Special Investigation Service, approximately 30 percent of its pre-trial investigations in the previous year were initiated following reports from citizens. The highest number of reports involved alleged violations related to health, environment, local government and justice. Rewards totalled 40,000 EUR in 2022, nearly double the 22,000 EUR the Lithuania's Special Investigation Service paid to 31 whistleblowers the year before (Worth, 2023).

A thorough examination of the American experience in governing whistleblower rewards reveals that it predominantly encompasses a range of sectoral incentive schemes that have demonstrated remarkable efficacy in detecting offences and mitigating their consequences over an extended period.

For instance, the U.S. Securities and Exchange Commission (SEC) utilises the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act to offer financial incentives in the form of monetary awards. These are designed to encourage, compensate and reward eligible individuals who voluntarily submit original information to the SEC. Such information must result in a successful enforcement action that leads to the imposition of sanctions amounting to more than 1 million USD. The range for awards is between 10% and 30% of the money collected. Factors that may increase an award percentage include the significance of the information provided by the whistleblower, the level of assistance provided by the whistleblower, the law enforcement interests at stake, and whether the whistleblower first reported the violation internally through the company's internal reporting channels (Organisation for Economic Co-operation and Development, 2017, p. 36-37). The whistleblower incentive scheme, which rewards individuals for assisting in the disclosure and investigation of insider trading, market manipulation and other abuses in organised markets, is recognised as a positive innovation. Since the programme began, the U.S. Securities and Exchange Commission has paid more than 1.3 billion USD in 328 awards to individuals who provided information leading to successful SEC and other agency enforcement actions. Whistleblowers have played a critical role in the SEC's efforts to protect investors and the marketplace through enforcement actions. Enforcement actions brought using information from meritorious whistleblowers have resulted in orders for more than 6.3 billion USD in total monetary sanctions, including over 4 billion USD in disgorgement of ill-gotten gains and interest. Of this, over 1.5 billion USD has been, or is scheduled to be, returned to harmed investors (U.S. Securities and Exchange Commission, 2022). Payments to whistleblowers are made from an Investor Protection Fund established by Congress. This fund is financed entirely through monetary sanctions paid to the SEC by those who violate securities law (U.S. Securities and Exchange Commission, 2025).

Likewise, in line with 7 U.S. Code § 26 U.S. Commodities Futures Trading Commission (CFTC) in any covered judicial or administrative action shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to:

(a) Not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(b) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or (United States Code, 2025).

The CFTC publishes a Notice of Covered Action for each enforcement action resulting in sanctions totalling over 1 million USD. Whistleblowers have 90 days from the date of posting to submit an award application. The CFTC considers a number of factors when determining the exact percentage of the award to grant to a whistleblower. These include the timeliness of the disclosure, the degree of further assistance provided by the whistleblower, the interest of law enforcement in the case and the culpability of the whistleblower in the violations (Kohn, Kohn & Colapinto, 2025).

Additionally, the US False Claims Act stipulates that whistleblowers must be paid between 15 and 30 percent of the government's monetary sanctions collected if they assist in the prosecution of fraud relating to government contracts and other government programmes (Protect, 2022).

Furthermore, under US law, whistleblowers may claim a share of assets seized by tax authorities during tax debt collection procedures.

United States law states that if the tax authorities take any administrative or judicial action based on information provided by an individual, that individual shall receive an award of at least 15 percent, but no more than 30 percent, of the proceeds collected as a result of the action (including any related actions), or of any settlement in response to the action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action (Article 7623(b)(1) of the United States Code). If the Whistleblower Office determines that the action is principally based on disclosures of specific allegations resulting from a judicial or administrative hearing, a governmental report, hearing,

audit or investigation, or the news media, it may award sums as it considers appropriate. However, in no case will the sum awarded exceed 10 percent of the proceeds collected as a result of the action or any settlement in response to it. This will be determined by taking into account the significance of the information provided by the individual and their role, and that of any legal representative, in contributing to the action (Article 7623(b)(2) of the United States Code). Between 2007 and 2023, the US Internal Revenue Service (IRS) collected 6.39 billion USD in tax debt based on reports from whistleblowers (Davis & Hawley, 2023).

It is also noteworthy that, HM Revenue & Customs also runs a reward scheme for individuals and in 2020/2021, paid out nearly 400,000 GBP on rewards for individuals who reported tax fraud, including fraud related to the COVID-19 relief schemes. These rewards are discretionary awards based on factors including the amount of tax recovered and the time saved in investigations (Protect, 2022).

It is particularly noteworthy that the United States Anti-Money Laundering Act of 2020 entitles qualifying whistleblowers to a mandatory award of between 10 and 30 per cent of the value of 'monetary sanctions' totalling more than 1 million USD that are collected as a result of an AML enforcement action. The U.S. Anti-Money Laundering Whistleblower Improvement Act (2022) creates a "Financial Integrity Fund" to pay for whistleblower awards, which can hold up to 300 million USD. The Department of Treasury can administer this fund independently of Congress, without the need for legislative appropriation (United States Anti-Money Laundering Act of 2020).

Sectoral whistleblowers encouraging schemes are developed in some other countries as well.

In Brazil, for instance, the legal protection for whistleblowers was included in the anti-crime package, which provides some protections for them, such as the prohibition of arbitrary dismissal, including the possibility of a reward of 5% of the recovered funds (Moro & Martins, 2023, p. 87). In addition, the anti-corruption legislation of Ukraine delineates the term "whistleblower" as an individual who, in the belief that the information is reliable, has reported possible instances of corruption or corruption-related offences, or other violations of the law committed by another person, if such information has become known to them in the course of their work, professional, economic, social, scientific activities, service or study, or participation in the procedures provided for by law, which are mandatory for commencing such activities, service or study (Article 1(1)(20) of the Law of Ukraine "On Prevention of Corruption" of 2014). Whistleblowers who report corruption offences where the monetary value of the object of the offence, or the damage caused to the state, exceeds 5000 or more times the subsistence minimum for able-bodied persons as established by law at the time of the offence, are entitled to remuneration (Article 53-7(1) of the Law of Ukraine "On Prevention of Corruption" of 2014). Following conviction, the amount of remuneration shall be equivalent to 10 per cent of the monetary value of the object of the corruption offence, or alternatively the amount of damage caused to the state. The amount of remuneration shall not exceed three thousand minimum salaries, as established by law at the time of the offence (Article 53-7(2) of the Law of Ukraine "On Prevention of Corruption" of 2014). If several whistleblowers provide different information about the same act of corruption, including information that supplements the relevant facts, the remuneration shall be shared equally among them (Article 53-7(3) of the Law of Ukraine "On Prevention of Corruption" of 2014).

It is evident that certain Canadian provinces have demonstrated a commitment to the concept of encouraging whistleblowers by introducing a special mechanism into their legislation on capital and commodity markets.

In particular, the OSC Policy 15-601 Whistleblower Program of 2022 determined that in the event of an award-eligible outcome (1,000,000 USD), the Commission will pay a whistleblower an award of between 5 and 15% of the total monetary sanctions imposed and/or voluntary payments made in the relevant proceeding or multiple related proceedings. In instances where the aggregate monetary sanctions imposed and/or voluntary payments made in a given proceeding, or multiple related proceedings, attains or exceeds 10,000,000 USD the maximum amount of any whistleblower award is 1,500,000 USD. In determining the appropriate percentage of a whistleblower award, the Commission may consider the following factors and increase or decrease the percentage of the award based on its analysis of the factors. The Commission may also use the factors to determine how to apportion an award among multiple whistleblowers, if applicable in the circumstances (Ontario Securities Commission, 2022).

For instance, circumstances that may increase the amount of the whistleblower's reward include:

(a) The timeliness of the whistleblower's initial report to the Commission or to an internal reporting mechanism of the entity involved in committing, or impacted by, the violation of Ontario securities law;

(b) the significance of the information provided by the whistleblower, including its truthfulness, reliability and completeness, the possibility for the Commission to independently obtain the respective information, and the degree to which the information meaningfully contributed to a successful investigation of the violation and obtaining an award eligible outcome;

(c) the level of assistance the whistleblower provided to Commission Staff, including whether the whistleblower provided ongoing, extensive and timely co-operation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry;
(d) any unique hardships experienced by the whistleblower resulting from the whistleblower's report to the Commission or an internal compliance and reporting mechanism;
(e) contribution to the Commission's priorities, including whether the subject matter of the action is a Commission priority because the reported misconduct involved regulated entities or fiduciaries, the violations of securities laws were particularly serious given the nature of the violation, the age and duration of the violation, the number of violations and the repetitive or ongoing nature of the violations (Ontario Securities Commission, 2022).

Conversely, the following factors may decrease the amount of a whistleblower award:
(1) The information provided by the whistleblower was not conducive to effective use by Commission Staff. For instance, the whistleblower demonstrated a paucity of knowledge with regard to the violation of Ontario securities law. Moreover, the information contained errors, was incomplete or lacking in detail, unclear or disorganized;
(2) the degree of fault or involvement of the whistleblower in the violations that were reported and that became the subject of the Commission's proceedings to ensure compliance with the law;
(3) unreasonable delay in reporting;
(4) interference with Commission Staff's investigation;
(5) interference with internal compliance and reporting mechanisms, including making any material false, fictitious or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported violation of Ontario securities law (Ontario Securities Commission, 2022).

During the initial two-year period of the whistleblowing co-operation initiative, the Ontario Securities Commission received approximately 200 reports from individuals who had knowledge of potential violations of securities legislation. In 2019, the Commission initiated the distribution of financial incentives to these individuals. As of 2020, the total amount of rewards received by whistleblowers has exceeded 8,600,000 USD (National Whistleblower Center, 2020).

4. Discussion

In consideration of the aforementioned observations, it can be concluded that a significant number of developed countries have established mechanisms to promote whistleblowing. These mechanisms are either general and include remuneration for reporting any violations of legislation in the public sphere, as in the Republic of Korea and Lithuania, or special and provide monetary incentives for reporting violations of legislation in specific areas of public relations. These areas include capital and commodity markets, taxation, anti-trust activities, corruption prevention, and the combating of money laundering and terrorism financing, as in Canada, the United States of America and the United Kingdom. The fundamental aspects of the whistleblower incentive system vary greatly depending on the regulatory approach adopted. The key aspects are: (i) the range of the reward amount for whistleblowers (10–30% in the United States of America and Canada, up to 30% in the Republic of Korea, and completely discretionary in Lithuania and the United Kingdom); and (ii) the existence and level of the damages threshold, including lost revenue (none in the Republic of Korea and Lithuania, and 1–1.5 million USD in Canada and the United States of America). The precise amount of the reward is determined by the value of the information provided by the whistleblower, which results in the imposition of liability measures on the offender, the conclusion of an amicable settlement agreement with them, or on other grounds. The criteria used to calculate the reward amount for a whistleblower in a specific case are mainly based on the reliability and completeness of the information about the offence, its value in terms of the complexity of the offence, how timely the information was provided, the degree and significance of the assistance provided to the competent authorities in law enforcement activities and in carrying out supervisory (control) measures, and the consequences of the whistleblower's co-operation with the competent authorities. Empirical studies of the effectiveness of whistleblower incentivisation schemes in states where they have been introduced confirm their high level of effectiveness in ensuring swift detection and investigation of offences, and the elimination of their consequences.

However, even against the backdrop of the large-scale, positive experience of encouraging whistleblowers, the development of this concept in the field of anti-money laundering and countering the financing of terrorism is accompanied by scientific discussion about the benefits and risks of incentivisation schemes for obliged entities.

In this regard, Day, Hise and Pérez-Cavazzo (2021) reflected on the threats associated with whistleblowing activities. They claimed that there is a widespread belief that the incentives offered by regulators to whistleblowers can undermine the implementation and maintenance of effective internal reporting channels for violations and other elements of the internal control system at organisational level. However,

researchers citing statistical data asserted that there is no reason to argue that greater financial incentives reduce the number of initial reports of violations submitted to managers or organisational management (Dey et al., 2021). Similarly, Westbrook (2018) noted that 83% of whistleblowers initially report internally before approaching the SEC (p. 1165). Additionally, Nyreröd and Spagnolo (2021) found that 90% (113 out of 126) of qui tam filers had initially contacted a supervisor, with limited success, before contacting the government (p. 253).

When assessing the impact of whistleblower incentivisation schemes on the effectiveness of the anti-money laundering system, it is commonly perceived that such initiatives may have a negative effect on certain aspects of the system. For example, the voluntary exchange of information between obliged entities may be affected (El-Hindi, 2022). It is acknowledged that such opinions are highly questionable; however, it is recognised that obliged entities are legally obligated to report threshold financial transactions, suspicious financial transactions (activities), and attempts to conduct them to a financial intelligence unit without any monetary incentives to do so. Nevertheless, the provision of monetary incentives to obligated entities has been demonstrated to increase their propensity to voluntarily, fully and promptly fulfil this obligation. The voluntary exchange of information between obliged entities regarding persons who have been refused to establish (maintain) business relationships, open an account or conduct a financial transaction is, in general, a prerogative of the obliged entities alone. As the prevention of the use of the financial system for money laundering or terrorist financing is the responsibility of the state, it is the state's competent authorities that should provide obliged entities with information on these issues and encourage them to use it properly, not only through directives, but also through positive incentives.

5. Conclusions

In view of the increasing prevalence and effectiveness of whistleblower incentive schemes, both of a general character and as sector-specific instruments for countering complex financial offences, including money laundering, it is proposed to establish a regulatory framework for monetary incentives designed to enhance the performance of obliged entities. Such a framework would provide for the remuneration of obliged entities or their employees for the proper execution of their statutory functions, in particular for the identification of suspicious financial transactions, the reporting of such transactions or attempted transactions to the financial intelligence unit, and the disclosure of information on persons who have opened or intend to open accounts, establish business relationships, or conduct financial operations. In light of the grave ramifications associated with money laundering and terrorist financing, and considering the intricacies involved in their detection, investigation, and consequence elimination, the remuneration allocated to obligated entities and whistleblowers from within their respective employee ranks should be set at 15-30% of their calculation base. This base may encompass the sums of funds of illicit origin, penalties for inadequate organisation and/or due diligence negligence, or other pertinent amounts. In order to ascertain the precise quantity of reward in particular instances, it is imperative to accord significance to the reliability and thoroughness of the information, its worth in terms of the degree of complexity of the offence, the expediency of its transmission, the extent and pertinence of assistance to the financial intelligence unit and law enforcement agencies. The right to receive a reward is to arise at the time of collection/return by government agents of funds of illegal origin in criminal proceedings initiated upon notification by the obligated entity.

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Received on: 09th of July, 2025
Accepted on: 16th of August, 2025
Published on: 19th of September, 2025