

Protection of persons reporting on breaches of Union law

2018/0106(COD) - 23/04/2018 - Legislative proposal

PURPOSE: to strengthen the protection of persons reporting on breaches of Union law (whistleblowers).

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: whistleblowers can play a key role in exposing and preventing breaches of the law and in safeguarding the welfare of society.

Whistleblower protection currently provided in the European Union is **fragmented** across Member States and uneven across policy areas.

This fragmentation and these gaps mean that, in many situations, **whistleblowers are not properly protected against retaliation**: 85 % of respondents to the 2017 public consultation carried out by the Commission believe that workers very rarely or rarely report concerns about threat or harm to the public because of fear of legal and financial consequences.

Lack of effective whistleblower protection raises further concerns on its negative impacts on the freedom of expression and the freedom of the media, enshrined in Article 11 of the EU Charter of Fundamental Rights.

It can also impair the enforcement of EU law. For these reasons, the importance of **providing effective whistleblower protection** for safeguarding the public interest is increasingly acknowledged both at European and international level.

The European Parliament, in its [resolution of 24 October 2017](#) called on the Commission to present a horizontal legislative proposal to guarantee a high level of protection for whistleblowers in the EU, in both the public and private sectors, as well as in national and EU institutions.

The proposal draws upon the case law of the **European Court of Human Rights** on the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights 10 ECHR, and the principles developed on this basis by the Council of Europe in its 2014 Recommendation on Protection of Whistleblowers.

IMPACT ASSESSMENT: the preferred option is (i) a **Directive** introducing whistleblower protection in specific areas (including the financial interests of the Union) where it is necessary to address whistleblowers' underreporting in order to enhance the enforcement of Union law, as breaches would lead to serious harm to the public interest; (ii) **complemented by a Communication** establishing a policy framework at EU level, including measures in support of national authorities.

In other areas of the single market, such as in public procurement, the benefits are estimated to be in the range of **EUR 5.8 to EUR 9.6 billion each year** for the EU as a whole.

CONTENU: the proposal establishes a set of **common minimum standards** for the protection of persons reporting on the following unlawful activities or abuse of law: (i) public procurement, (ii) financial services, (iii) money laundering and terrorist financing, (iv) product safety, (v) transport safety, (vi) environmental protection, (vii) nuclear safety, (viii) food and feed safety, (ix) animal health and welfare, (x) public health, (xi) consumer protection, (xii) privacy, data protection and security of networks and information systems.

It also applies to breaches of EU competition rules, breaches and abuses of company taxation rules and damage to EU financial interests.

Internal and external alerts: the proposal requires Member States to ensure that legal entities in the private and public sectors put in place adequate **internal reporting channels** and procedures for follow-up of reports. This shall include private legal entities with more than 50 employees or an annual turnover of more than EUR 10 million as well as all national or regional administrations and municipalities in cities with more than 10 000 inhabitants.

The proposal requires that reporting channels ensure the **confidentiality** of the reporting person's identity and that the service responsible for receiving the report follows up diligently and informs the informant within a reasonable timeframe **not exceeding three months after the report**.

Member States shall also be required to ensure that competent authorities have in place **external reporting channels** and procedures for receiving and following-up on reports and sets out the minimum standards applicable to such channels and procedures.

Protection of informants: in order to discourage malicious or abusive reports, the proposal requires that reporting persons have reasonable grounds to believe that the information reported was true at the time of reporting.

Moreover, reporting persons are generally required to use **internal channels** first; if these channels do not work or could not reasonably be expected to work, they may report to the competent authorities, and, as a last resort, to the public/ the media.

The proposal requires that **retaliation in any form be prohibited** and sets out further measures that Member States should take to ensure the protection of reporting persons, including:

- making easily accessible to the public and free of charge **independent information and advice** on procedures and remedies available on protection against retaliation;
- **exempting reporting persons from liability** for breach of restrictions on disclosure of information imposed by contract or by law;
- providing for the **reversal of the burden of proof** in legal proceedings so that, in prima facie cases of retaliation, it is up to the person taking action against a whistleblower to prove that it is not retaliating against the act of whistleblowing;
- putting at the disposal of reporting persons **remedial measures** against retaliation.

Persons involved in acts reported by a whistleblower should enjoy the presumption of innocence, the right to an effective remedy and a fair trial and the right of defence.

Lastly, the proposal provides for **effective, proportionate and dissuasive penalties** which are necessary: (i) to punish and proactively discourage actions aimed at hindering reporting, retaliatory actions, vexatious proceedings against reporting persons and breaches of the duty of maintaining the confidentiality of their identity, and, (ii) to discourage malicious and abusive whistleblowing.