



**2016/2224(INI)**

13.7.2017

# OPINION

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI))

Rapporteur: David Casa



## SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the role of whistle-blowers within both the public and private sectors is to help in exposing, deterring, and preventing wrongdoing, such as mismanagement, fraud and corruption, thus contributing to the promotion of human rights, the rule of law, freedom of expression, transparency and democratic accountability, as well as workers' rights; whereas whistle-blowers are often employees bound by a working relationship who are dependent on their salary as their means of living income;
- B. whereas the importance of the protection of whistle-blowers has been recognised by all major international instruments concerning corruption and whistle-blowing standards have been set out by the United Nations Convention against Corruption (UNCAC), Council of Europe Recommendation CM/Rec(2014)7 and the 2009 OECD Anti-Bribery Recommendation;
- C. whereas recent mass leaks revealing corruption, such as the Panama Papers affair and Swiss Leaks, and the disclosure of the circumventing and breaches of rules on labour law leading in certain cases to precarious employment, confirm the importance of the role played by whistle-blowers in defending the public interest; whereas there is currently insufficient recognition and protection of whistle-blowers in Europe;
- D. whereas serious concerns have often been raised that whistle-blowers acting in the public interest can face hostility, harassment, intimidation and exclusion at their place of work, impediments to future employment, loss of livelihood and often also serious threats to their family members and colleagues; whereas fears of retaliation can have a deterrent effect on whistle-blowers, thereby endangering the public interest;
- E. whereas workplaces need to cultivate a working environment within which people feel confident in raising concerns about potential wrongdoings such as failings, misconduct, mismanagement, fraud or illegal actions; whereas it is extremely important to foster the right culture that allows people to feel able to raise issues without fear of reprisals that might affect their current and future employment situation;
- F. whereas the objective of whistle-blowing should be the reporting of acts that represent a threat to the public interest, a breach of law, or any other wrongdoing or misconduct;
- G. whereas some Member States already have laws that protect whistle-blowers, but others do not, which leads to limited or uneven protection of whistle-blowers across the EU; whereas this is particularly significant where there are cross-border or EU-wide implications; whereas this creates legal uncertainty;
- H. whereas, given that the existence of a national legal framework to protect whistle-blowers does not always guarantee the proper implementation and effectiveness of whistle-blower protection, it is essential that Member States ensure compliance with existing national legislation to protect whistle-blowers;

- I. whereas corruption is a serious problem facing the European Union today, as it can result in the failure of governments to protect the population, workers, the rule of law and the economy, in a deterioration of public institutions and services, economic growth and competitiveness in various fields, and in a loss of trust in the transparency and democratic accountability of public and private institutions and industries; whereas corruption is estimated to cost the EU economy EUR 120 billion annually or 1 % of EU GDP;
- J. whereas economic intelligence can be cross-border in scope and whereas whistle-blowers play a major role in bringing to light illegal acts carried out in other countries against national economic interests;
- K. whereas whistle-blowers are also of key importance in identifying mistakes, challenges or problems within an organisation at an early stage; whereas there can be an organisational culture of learning from mistakes if this practice is respected; whereas in some organisations and Member States this has led to support for the reporting of mistakes and therefore to organisational change;
1. Calls for action to change the public perception of whistle-blowers, particularly by politicians, employers and the media, by highlighting their positive role as an early warning mechanism and as a deterrent to detect and prevent abuses and corruption, and as an accountability mechanism to enable public scrutiny of governments and companies;
  2. Welcomes the Council of Europe recommendation concerning the scope of a European framework for the protection of whistle-blowers which should cover all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not;
  3. Calls on the Commission, after assessment of the legal basis, consultation of social partners, and in compliance with the subsidiarity principle, to draft a legislative or legal proposal on whistle-blowers; calls for effective measures to protect whistle-blowers who detect and in good faith report cases of wrongdoing in the public interest, from work-related unfair treatment, retaliation and criminal and civil liability; stresses the importance of ensuring the anonymity of whistle-blowers and the confidentiality of the process;
  4. Points to the danger of whistle-blowing workers who acted in the public interest being excluded from career progression, losing their jobs or suffering retaliation by colleagues and management at their workplace, and to the dampening, threatening and long-term psychologically devastating effect this has on those who may come across wrongdoing; highlights that whistle-blowers act at high personal and professional risk and usually pay a personal and professional price for it; highlights therefore that the definition of ‘whistle-blower’ should be applied to as many different types of workers as possible, including current and former employees, as well as trainees, apprentices and others;
  5. Recalls the importance of devising instruments to sanction and ban any form of retaliation, such as harassment, or other punitive or discriminatory treatment, including action taken against colleagues or family members as a result of the disclosure of information;
  6. Stresses that whistle-blowers and their family members whose lives or safety are in jeopardy must be entitled to receive effective and adequate protection and to take action

through the courts wherever necessary;

7. Stresses that whistle-blowers are an important source of information for investigative journalists, and calls on the Member States to ensure that the rights of journalists and the identity of whistle-blowers acting in good faith are protected effectively and legally in instances when allegations are proven true; stresses that when journalists are themselves the source they should also be protected and that authorities in both cases should refrain from using surveillance;
8. Considers that the burden of proof should lie with the employer who must clearly demonstrate that any measures taken against an employee were in no sense connected with a whistle-blower's disclosure;
9. Urges employers, workers' representatives and the authorities to put in place effective channels for reporting and disclosing wrongdoing, to act swiftly on the information reported to them after thorough verification, and to urgently inform all necessary and relevant parties, agencies and institutions of any illegality or wrongdoing;
10. Recalls that it is necessary to afford the necessary legal certainty and protection throughout the Union to those who report verified wrongdoing within both the public and the private sectors;
11. Recalls that any future normative framework should take into account the rules, rights and duties that govern and impact on employment; further emphasises that this should be done with the involvement of social partners and in compliance with collective bargaining agreements;
12. Recalls that after a thorough verification, and in the event of deliberately false accusations made in bad faith, those responsible should be held accountable;
13. Urges the relevant authorities to lay down a best-efforts obligation in connection with arrangements for receiving and dealing with reports that are put in place by both employers and the authorities themselves.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	12.7.2017
<b>Result of final vote</b>	+: 50 -: 0 0: 2
<b>Members present for the final vote</b>	Guillaume Balas, Tiziana Beghin, Brando Benifei, Enrique Calvet Chambon, David Casa, Ole Christensen, Martina Dlabajová, Lampros Fountoulis, Elena Gentile, Arne Gericke, Marian Harkin, Czesław Hoc, Danuta Jazłowiecka, Agnes Jongerius, Rina Ronja Kari, Jan Keller, Adam Kósa, Agnieszka Kozłowska-Rajewicz, Jean Lambert, Jérôme Lavrilleux, Patrick Le Hyaric, Jeroen Lenaers, Verónica Lope Fontagné, Javi López, Thomas Mann, Dominique Martin, Anthea McIntyre, Joëlle Mélin, Elisabeth Morin-Chartier, Marek Plura, Terry Reintke, Robert Rochefort, Claude Rolin, Sven Schulze, Siôn Simon, Romana Tomc, Yana Toom, Marita Ulvskog, Renate Weber, Tatjana Ždanoka, Jana Žitňanská
<b>Substitutes present for the final vote</b>	Maria Arena, Lynn Boylan, Tania González Peñas, Marju Lauristin, Paloma López Bermejo, Anne Sander, Joachim Schuster, Csaba Sógor, Helga Stevens, Flavio Zanonato
<b>Substitutes under Rule 200(2) present for the final vote</b>	Andrejs Mamikins

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

50	+
ALDE	Enrique Calvet Chambon, Martina Dlabajová, Marian Harkin, Robert Rochefort, Yana Toom, Renate Weber
ECR	Arne Gericke, Czesław Hoc, Anthea McIntyre, Helga Stevens, Jana Žitňanská
EFDD	Tiziana Beghin
GUE/NGL	Lynn Boylan, Tania González Peñas, Rina Ronja Kari, Patrick Le Hyaric, Paloma López Bermejo
NI	Lampros Fountoulis
PPE	David Casa, Danuta Jazłowiecka, Agnieszka Kozłowska-Rajewicz, Ádám Kósa, Jérôme Lavrilleux, Jeroen Lenaers, Verónica Lope Fontagné, Thomas Mann, Elisabeth Morin-Chartier, Marek Plura, Claude Rolin, Anne Sander, Sven Schulze, Csaba Sógor, Romana Tomc
S&D	Maria Arena, Guillaume Balas, Brando Benifei, Ole Christensen, Elena Gentile, Agnes Jongerius, Jan Keller, Marju Lauristin, Javi López, Andrejs Mamikins, Joachim Schuster, Siôn Simon, Marita Ulvskog, Flavio Zanonato
VERTS/ALE	Jean Lambert, Terry Reintke, Tatjana Ždanoka
0	-
2	0
ENF	Dominique Martin, Joëlle Mélin

Key to symbols:

+ : in favour

- : against

0 : abstention