



2018/0106(COD)

25.9.2018

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council
on the protection of persons reporting on breaches of Union law
(COM(2018)0218 – C8-0159/2018 – 2018/0106(COD))

Rapporteur for opinion: Neoklis Sylikiotis

PA_Legam

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207 and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, **153, 154**, 168, 169, 192, 207 and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Amendment 2

Proposal for a directive

Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to the initiative report of the European Parliament on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies,

Amendment 3

Proposal for a directive

Citation 2 a (new)

Text proposed by the Commission

Amendment

Having regard to the European Convention on Human Rights, notably Article 10,

Amendment 4

Proposal for a directive Citation 3 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental Rights of the European Union, in particular Article 11,

Amendment 5

Proposal for a directive Recital 1

Text proposed by the Commission

Amendment

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation.

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. ***The purpose of this Directive is to create a climate of trust that enables whistleblowers to report observed or suspected breaches of law, as well as threats to the public interest.*** By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation.

Amendment 6

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) In certain policy areas, breaches of Union law may cause serious harm to the public interest, in the sense of creating significant risks for the welfare of society.

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Where weaknesses of enforcement have been identified in those areas, and whistleblowers are in a privileged position to disclose breaches, it is necessary to enhance enforcement by ensuring effective protection of whistleblowers from retaliation and **introducing** effective reporting channels.

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Amendment 7

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Reporting persons or Whistleblowers are acting in the interest of the public, taking at times great personal risk. They should therefore be protected when they disclose information to the public, including through the media, as insufficient protection can deter potential whistleblowers.

Amendment 8

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) In order to facilitate public disclosures and establish an open culture of reporting, the conditions for public disclosures should be in line with the Council of Europe Recommendation CM/Rec(2014)7 on the protection of whistleblowers. The media should by no means be hindered from exposing any wrongdoing and thereby fulfilling its democratic role.

Amendment 9

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Effective enforcement of Union law is also required where it concerns amongst others, workers' protection, employment and working conditions, social, individual and collective workers' rights as well as the rights of their representatives pursuant to Articles 153 and 154 TFEU.

Amendment 10

Proposal for a directive

Recital 20

Text proposed by the Commission

Amendment

(20) This Directive should be without prejudice to the protection afforded to employees when reporting on breaches of Union employment law. In particular, in the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. ***Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.***

(20) This Directive should be without prejudice to the protection afforded to employees when reporting on breaches of Union employment law. In particular, in the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger ***but does not foresee the right to report breaches.***

Justification

The reference to Directive 89/391 / EEC Article 11 is misleading. Article 11 stresses that workers have the right to make suggestions to their employer without disadvantage to

improve health and safety at work. The Directive does not provide for the right to report violations to authorities or even the public.

Amendment 11

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) Effective enforcement of Union law requires that protection is granted to the broadest possible range of categories of persons, who, irrespective of whether they are EU citizens or third-country nationals, by virtue of work-related activities (irrespective of the nature of these activities, whether they are paid or not), have privileged access to information about breaches that would be in the public's interest to report and who may suffer retaliation if they report them. Member States should ensure that the need for protection is determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship, so as to cover ***the whole range of*** persons connected ***in a broad sense*** to the ***organisation where the breach has occurred***.

Amendment

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Amendment 12

Proposal for a directive

Recital 26

Text proposed by the Commission

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union⁵², i.e. persons who, for a certain period of time, perform services for and under the direction of another person, in return of which they receive

Amendment

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union⁵², i.e. persons who, for a certain period of time, perform ***or performed*** services for and under the direction of another person, in return of

remuneration. Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, which are types of relationships where standard protections against unfair treatment are often difficult to apply.

which they receive remuneration. ***In accordance with the Court's case law, the notion of worker should be interpreted broadly, including, for example civil servants.*** Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, a ***contractor or subcontractor or where work based relationship is solely bound to directives,*** which are types of relationships where standard protections against unfair treatment are often difficult to apply.

⁵² Judgments of 3 July 1986, Lawrie-Blum, Case 66/85; 14 October 2010, Union Syndicale Solidaires Isère, Case C-428/09; 9 July 2015, Balkaya, Case C-229/14; 4 December 2014, FNV Kunsten, Case C-413/13; and 17 November 2016, Ruhrländklinik, Case C-216/15.

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Amendment 13

Proposal for a directive Recital 27

Text proposed by the Commission

(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw

Amendment

(27) Protection should also extend to ***people facilitating the reporting, intermediaries and investigative journalists, who disclose potential or occurred breach, as well as*** further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or

attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation in the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation in the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

Amendment 14

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) Protection should be given to individuals working at institutions within the Union, but also to individuals working in European entities located outside Union territory. It should also apply to officials as well as other employees and interns working at the institutions, agencies and bodies of the Union.

Amendment 15

Proposal for a directive Recital 33

Text proposed by the Commission

(33) Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers from retaliation increases the legal certainty of (potential) whistleblowers and thereby encourages and facilitates whistleblowing also to the media. In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies.

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Amendment 16

Proposal for a directive Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) In cases of high level corruption additional safeguards are necessary to ensure that reporting persons are not prevented from receiving protection by the concerned persons the information in their possession will incriminate.

Amendment 17

Proposal for a directive Recital 35 b (new)

Text proposed by the Commission

Amendment

(35b) Reporting persons in possession of

information related to high-level corruption should have recourse to a judicial body that is autonomous from other branches of government with the powers to grant reporting persons effective protection and address the breaches that they expose.

Amendment 18

Proposal for a directive Recital 42

Text proposed by the Commission

(42) Provided the confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee confidentiality of the identity of the reporting person.

Amendment

(42) Provided the ***anonymity or*** confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee ***anonymity nor*** confidentiality of the identity of the reporting person.

Amendment 19

Proposal for a directive Recital 43

Text proposed by the Commission

(43) Third parties may also be authorised to receive reports on behalf of private and public entities, provided they offer appropriate guarantees of respect for independence, confidentiality, data protection and secrecy. These can be external reporting platform providers, external counsel or auditors or trade union representatives.

Amendment

(43) Third parties may also be authorised to receive reports on behalf of private and public entities, provided they offer appropriate guarantees of respect for independence, confidentiality, ***the possibility for anonymity***, data protection and secrecy. These can be external reporting platform providers, external counsel or auditors or trade union

representatives.

Amendment 20

Proposal for a directive Recital 44

Text proposed by the Commission

(44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality reports by the employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

Amendment

(44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality, **and with respect of anonymity if appropriate**, reports by the employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

Amendment 21

Proposal for a directive Recital 46

Text proposed by the Commission

(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further unnecessary reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow up to the report (for instance, closure based on lack of sufficient evidence or other grounds, launch of an internal enquiry and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the

Amendment

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enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total **three** months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect.

enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total **two** months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect.

Amendment 22

Proposal for a directive Recital 47

Text proposed by the Commission

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

Amendment

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. ***Such entities should also provide information on rights guaranteed to whistleblowers, particularly their right to disclosure guaranteed by this Directive, and their right to turn to civil society organisations involved in whistleblower protection to this end, in particular those who provide strategic and legal advice to whistleblowers.*** Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

Amendment 23

Proposal for a directive Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Recipients of disclosed information within the workplace should include, but not be limited to: (a) line-managers, superiors or representatives of the organisation; (b) human resources officers, ethics officers, work councils or other bodies in charge of mediating conflicts at work including conflicts of interest; (c) internal financial oversight bodies within the organisation; (d) disciplinary bodies within the organisation.

Amendment 24

Proposal for a directive Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) In all cases, the reporting person should be informed of the investigation's progress and should be able to access the draft report at least once so as to be able to comment on it, albeit with no obligation to do so. These comments should be incorporated and taken into account in the monitoring of the investigation. The reporting person should be informed of the investigation's outcome and should be able to revise and comment on the final report of the investigation. These comments should be included in the final report.

Amendment 25

Proposal for a directive Recital 50

Text proposed by the Commission

(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report, as well as to avoid unnecessary public disclosures. Such timeframe should not exceed **three** months, but could be extended to **six** months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

Amendment

(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report, as well as to avoid unnecessary public disclosures. Such timeframe should not exceed **two** months, but could be extended to **four** months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

Amendment 26

**Proposal for a directive
Recital 51 a (new)**

Text proposed by the Commission

Amendment

(51a) EU institutions should create a competent authority to receive and handle reports. The Union should ensure that the competent authority establishes independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving and handling information provided by the reporting person; give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding three months or six months in duly justified cases and transmit the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law. The Union should also ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject matter of the reports. The competent authorities should communicate to the reporting person the final outcome of the

investigations. The Union should ensure that any authority which has received a report but does not have the competence to address the breach reported transmits it to the competent authority and that the reporting person is informed.

Amendment 27

Proposal for a directive Recital 64

Text proposed by the Commission

(64) Persons making a public disclosure directly should also qualify for protection *in cases where a breach remains unaddressed (for example, it was not properly assessed or investigated or no remedial action was taken) despite having been reported internally and/or externally following a tiered use of available channels; or in cases where reporting persons have valid reasons to believe that there is collusion between the perpetrator of the breach and the competent authority is reasonably suspected, that evidence may be concealed or destroyed, or that the effectiveness of investigative actions by competent authorities might be jeopardised; or in cases of imminent and manifest danger for the public interest, or where there is a risk of irreversible damage, including, inter alia, harm to physical integrity.*

Amendment

(64) Persons making a public disclosure directly should also qualify for protection *under this Directive, regardless of whether the breach has been reported internally and/or externally.*

Amendment 28

Proposal for a directive Recital 65

Text proposed by the Commission

(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken by their employer or customer/recipient of services

Amendment

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and by persons working for or acting on behalf of the latter, including co-workers and managers in the same organisation or in other organisations with which the reporting person is in contact in the context of his/her work-related activities, where retaliation is recommended or tolerated by the concerned person. Protection should be provided against retaliatory measures taken vis-à-vis the reporting person him/herself but also those that may be taken vis-à-vis the legal entity he/she represents, such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.

and by persons working for or acting on behalf of the latter, including co-workers and managers in the same organisation or in other organisations with which the reporting person is in contact in the context of his/her work-related activities, where retaliation is recommended or tolerated by the concerned person. Protection should be provided against retaliatory measures taken vis-à-vis the reporting person him/herself but also those that may be taken vis-à-vis the legal entity he/she represents, such as denial of provision of services, blacklisting or business boycotting. ***Protection against retaliation should also be granted to natural or legal persons closely linked to the reporting person, irrespective of the nature of the activities, and whether they are paid or not.*** Indirect retaliation also includes actions taken against relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.

Amendment 29

Proposal for a directive Recital 67

Text proposed by the Commission

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by

Amendment

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public ***and support the work of civil society organisations providing this information.*** Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and

the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

Amendment 30

Proposal for a directive Recital 82

Text proposed by the Commission

(82) The material scope of this Directive is based on ***the identification of areas where the introduction of whistleblower protection appears justified and necessary on the basis of currently available evidence. Such material scope may be extended to further areas or*** Union acts, ***if this proves necessary as a means of strengthening their enforcement in the light of evidence that may come to the fore in the future or on the basis of the evaluation of the way in which this Directive has operated.***

Amendment

(82) The material scope of this Directive is based on ***all*** Union Acts.

Amendment 31

Proposal for a directive Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) This Directive is a new standard for protecting the rights of persons reporting on breaches of Union law and should serve as an example for the candidate countries, associated countries and other countries that have committed to bring their legislation closer to the European acquis, especially in the context of reporting on abuse of EU funding and EU macro-financial assistance provided

to these countries.

Amendment 32

Proposal for a directive Article 1 – paragraph 1– introductory part

Text proposed by the Commission

1. With a view to enhancing the enforcement of Union law and policies *in specific areas*, this Directive lays down common minimum standards for the protection of persons reporting on *the following* unlawful activities or abuse of law:

Amendment

1. With a view to enhancing the enforcement *of the individual protection of persons reporting breaches* of Union law and policies, this Directive lays down common minimum standards for the protection of persons reporting on unlawful activities or abuse of *all* Union law:

Amendment 33

Proposal for a directive Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) persons having the status of worker, with the meaning of Article 45 TFEU;

Amendment

(a) persons having *or having had* the status of *a* worker, with the meaning of Article 45 TFEU, *or a work-based relationship*,

Amendment 34

Proposal for a directive Article 2 – paragraph 1 – point c

Text proposed by the Commission

(c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well as volunteers and *unpaid* trainees;

Amendment

(c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well as volunteers and trainees;

Amendment 35

Proposal for a directive Article 2 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) family members of the reporting person, notably in cases of harassment;

Amendment 36

Proposal for a directive

Article 2 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) any person presenting new information on the breaches;

Amendment 37

Proposal for a directive

Article 2 – paragraph 1 – point d c (new)

Text proposed by the Commission

Amendment

(dc) officials and the other servants of the European Union and the European Atomic Energy Community and the other servants who report information on any of the breaches referred to in Article 1, without prejudice to Articles 22a, 22b and 22c of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68^{1a},

^{1a} OJ L 56, 4.3.1968, p. 1.

Amendment 38

Proposal for a directive

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ‘breaches’ means actual or potential unlawful **activities or abuse of law relating to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex;**

(1) breach’ means **an** actual or potential unlawful **activity, misconduct, or abuse in relation to Union law;**

Amendment 39

Proposal for a directive

Article 3 – paragraph 1 – point 8 a (new)

Text proposed by the Commission

Amendment

(8a) 'high level corruption' means an actual or potential unlawful activity, misconduct, or abuse in relation to Union law by concerned persons at ministerial level or higher and heads of public authorities and the staff that report directly to such concerned persons;

Amendment 40

Proposal for a directive

Article 3 – paragraph 1 – point 9

Text proposed by the Commission

Amendment

(9) 'reporting person' means a natural or legal person who reports or discloses information on breaches ***acquired in the context of his or her work-related activities;***

(9) 'reporting person' means a natural or legal person who reports or discloses information on breaches, ***who contributes, assists or aids to reveal or make public information on breaches, as well as persons representing the reporting person without necessarily having witnessed such acts first hand;***

Amendment 41

Proposal for a directive

Article 3 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(10) 'work-related context' means current or past work activities in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches and within which these persons may suffer retaliation if they report them.

(10) 'work-related context' means current or past work activities ***regardless of the employment status or business relationship*** in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches within which these persons may

suffer retaliation if they report them;

Amendment 42

Proposal for a directive

Article 3 – paragraph 1 – point 10 a (new)

Text proposed by the Commission

Amendment

(10a) ‘worker’ means a natural person who has an employment contract or employment relationship as defined by law, collective agreements and/or practices in force in each Member State, in accordance with the criteria for determining the status of a worker as established by the case law of the Court of Justice of the European Union;

Amendment 43

Proposal for a directive

Article 3 – paragraph 1 – point 12

Text proposed by the Commission

Amendment

(12) ‘retaliation’ means any threatened or actual act or omission prompted by the internal or external reporting ***which occurs in a work-related context*** and causes or may cause unjustified detriment to the reporting person;

(12) ‘retaliation’ means any threatened or actual act or omission prompted by the internal or external reporting and causes or may cause unjustified detriment to the reporting person ***or a member of his/her family;***

Amendment 44

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States may stipulate that legal entities in the private sector should establish internal reporting channels and procedures for reporting and following up on reports, following consultations with

social partners, if appropriate.

Amendment 45

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d), but the use of internal channels for reporting shall not be mandatory for these categories of persons.

Amendment

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d), but the use of internal channels for reporting shall not be mandatory for these categories of persons. ***Workers and their representatives shall be consulted on proposals to set up respective channels and procedures.***

Amendment 46

Proposal for a directive Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Such channels shall safeguard the anonymity of the reporting person as well as their personal data.

Amendment 47

Proposal for a directive Article 4 – paragraph 6 – point a a (new)

Text proposed by the Commission

Amendment

a a) European Union institutions, agencies and bodies;

Amendment 48

Proposal for a directive

Article 4 – paragraph 6 – point c

Text proposed by the Commission

(c) municipalities ***with more than 10 000 inhabitants***;

Amendment

(c) municipalities;

Amendment 49

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) diligent follow up to the report by the designated person or department;

Amendment

(c) diligent follow up to the report by the designated person or department ***and appropriate and timely action if needed***;

Amendment 50

Proposal for a directive

Article 5 – paragraph 1 – point d

Text proposed by the Commission

(d) a reasonable timeframe, not exceeding ***three*** months following the report, to provide feedback to the reporting person about the follow-up to the report;

Amendment

(d) a reasonable timeframe, not exceeding ***two*** months following the report, ***with an acknowledgement of the receipt of report within five days***, to provide feedback to the reporting person about the follow-up to the report;

Amendment 51

Proposal for a directive

Article 5 – paragraph 2 – point b

Text proposed by the Commission

(b) physical meetings with the person or department designated to receive reports.

Amendment

(b) physical meetings with the person or department designated to receive reports. ***In these meetings, the reporting person shall have the right to be accompanied by a representative of their choice. The employee representative is obliged to keep the information regarding the report and the process confidential***

and secure.

Amendment 52

Proposal for a directive Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure the protection of reporting to an employer other than his or her direct employer where there are multiple organisations or employers involved and the worker reasonably believes the information relates solely or mainly to the conduct of that person or organisation, or is a matter for which that person or organisation has legal responsibility. Any such disclosure shall be treated as internal reporting.

Amendment 53

Proposal for a directive Article 6 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding **three** months or **six** months in duly justified cases;

(b) give **comprehensive** feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding **two** months or **four** months in duly justified cases;

Amendment 54

Proposal for a directive Article 6 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) give the reporting person the opportunity, without compelling him/her, to look over, examine and comment on the draft report over the course of the investigation, and the final report before it is published at the end of the investigation and, where relevant, take his/her

comments into account;

Amendment 55

Proposal for a directive
Article 6 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) safeguard the anonymity of the reporting person as well as their personal data;

Amendment 56

Proposal for a directive
Article 6 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) guarantee free and independent advice and legal support for reporting persons and intermediaries.

Amendment 57

Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. EU institutions shall create an independent competent authority to receive, handle, follow-up reports and assure confidentiality and protection for whistleblowers.

Amendment 58

Proposal for a directive
Article 6 – paragraph 4 b (new)

4 b. The Union shall ensure that the competent authority:

a) establishes independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving and handling information provided by the reporting person;

b) gives feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding three months or six months in duly justified cases;

c) transmits the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.

The Union shall ensure that the competent authority follows up on reports by taking the necessary measures, and investigates, to the extent appropriate, the subject-matter of the reports.

The competent authorities shall communicate to the reporting person the final outcome of the investigations.

The Union shall ensure that if one of its authorities has received a report but does not have the competence to address the breach reported, it transmits it to the competent authority and that the reporting person is informed.

Amendment 59

Proposal for a directive Article 7 – paragraph 1 – point c a (new)

(ca) they guarantee free and

independent advice and legal support for reporting persons and intermediaries.

Amendment 60

Proposal for a directive

Article 7 – paragraph 2 – point b

Text proposed by the Commission

(b) oral report through telephone lines, *whether recorded or unrecorded*;

Amendment

(b) oral report through *recorded* telephone lines;

Amendment 61

Proposal for a directive

Article 7 – paragraph 2 – point c

Text proposed by the Commission

(c) physical meeting with dedicated staff members of the competent authority.

Amendment

(c) physical meeting with dedicated staff members of the competent authority. *In these meetings, the reporting person shall have the right to be accompanied by a representative of their choice. The employee representative is obliged to keep the information regarding the report and the process confidential and secure.*

Amendment 62

Proposal for a directive

Article 7 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) guaranteed free and independent advice and legal support for reporting persons and intermediaries.

Amendment 63

Proposal for a directive Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. These channels shall safeguard the anonymity of whistleblowers, as well as their personal data.

Amendment 64

Proposal for a directive Article 9 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the manner in which the competent authority may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person;

(a) the manner in which the competent authority may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person **while protecting her or his anonymity**;

Amendment 65

Proposal for a directive Article 9 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) a reasonable timeframe, not exceeding **three** months or **six** months in duly justified cases, for giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back;

(b) a reasonable, **adequate**, timeframe, not exceeding **two** months or **four** months in duly justified cases, for giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back;

Amendment 66

Proposal for a directive Article 9 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) giving the reporting person the

opportunity, without compelling him/her, to look over, examine and comment on the draft report over the course of the investigation, and the final report before it is published at the end of the investigation and, where relevant, take his/her comments into account.

Amendment 67

Proposal for a directive Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Reporting of High Level Corruption

Reporting persons in possession of information on high-level corruption shall be able to report directly to a judicial body set-up and self-regulated by the judiciary in a Member State. This judicial body shall be completely autonomous from other branches of government and shall have the powers to provide the reporting person with physical and legal protection and take every action necessary ensure that breaches are thoroughly investigated and concerned persons brought to justice.

Amendment 68

Proposal for a directive Article 10 – paragraph 1 – point b – point i

Text proposed by the Commission

Amendment

(i) the phone numbers, indicating ***whether*** conversations are recorded ***or unrecorded when using those phone lines***;

(i) the phone numbers, indicating ***that*** conversations are recorded;

Amendment 69

Proposal for a directive

Article 10 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) contact information of civil society organisations where legal advice can be obtained free of charge.

Amendment 70

Proposal for a directive

Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The protection covers persons reporting of breaches of Union law regardless of the channel used. The individual circumstances of each case shall determine the most appropriate channel.

Amendment 71

Proposal for a directive

Article 13 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. A person reporting externally shall qualify for protection under this Directive where one of the following conditions is fulfilled:

2. External reporting shall be estimated as the most appropriate channel especially where one of the following conditions is fulfilled:

Amendment 72

Proposal for a directive

Article 13 – paragraph 2 -point c

Text proposed by the Commission

Amendment

c) the use of internal reporting channels **was not mandatory for the reporting person, in accordance with Article 4(2);**

c) the use of internal reporting channels **would not have achieved the same results;**

Amendment 73

Proposal for a directive
Article 13 – paragraph 4 – introductory part

Text proposed by the Commission

4. A person publicly disclosing information on breaches falling within the scope of this Directive shall qualify for protection under this Directive where:

Amendment 74

Proposal for a directive
Article 13 – paragraph 4 – point b

Text proposed by the Commission

b) he or she could not reasonably be expected to use internal and/or external reporting channels due to imminent or manifest danger for the public interest, or to the particular circumstances of the case, or where there is a risk of irreversible damage.

Amendment 75

Proposal for a directive
Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;

Amendment 76

Proposal for a directive
Article 14 – paragraph 1 – point d

Amendment

4. A person publicly disclosing information on breaches falling within the scope of this Directive shall qualify for protection under this Directive ***especially*** where:

Amendment

b) he or she could not reasonably be expected to use internal and/or external reporting channels due, ***for instance***, to imminent or manifest danger for the public interest, or to the particular circumstances of the case, or where there is a risk of irreversible damage.

Amendment

(c) transfer ***or restriction*** of duties, change of location of place of work, reduction in wages ***and allowances***, change ***or reduction*** in working hours ***and working time arrangements***;

Text proposed by the Commission

Amendment

(d) withholding of training;

(d) withholding of training **and vocational training**;

Amendment 77

Proposal for a directive

Article 14 – paragraph 1 – point i

Text proposed by the Commission

Amendment

(i) failure to convert a temporary employment contract into a permanent one;

(i) failure to convert a temporary **or non-standard** employment contract into a permanent one;

Amendment 78

Proposal for a directive

Article 14 – paragraph 1 – point n a (new)

Text proposed by the Commission

Amendment

(na) mandatory psychiatric or medical referrals;

Amendment 79

Proposal for a directive

Article 14 – paragraph 1 – point n b (new)

Text proposed by the Commission

Amendment

(nb) actual, threatened or attempted retaliatory actions;

Amendment 80

Proposal for a directive

Article 14 – paragraph 1 – point n c (new)

Text proposed by the Commission

Amendment

(nc) obstruction or cancellation of retirement benefits;

Amendment 81

Proposal for a directive

Article 14 – paragraph 1 – point n d (new)

Text proposed by the Commission

Amendment

**(nd) loss of benefits or status,
cancellation of duties;**

Amendment 82

Proposal for a directive

Article 14 – paragraph 1 – point n e (new)

Text proposed by the Commission

Amendment

(ne) retaliatory investigations;

Amendment 83

Proposal for a directive

Article 14 – paragraph 1 – point n f (new)

Text proposed by the Commission

Amendment

**(nf) failure by managers to make
reasonable efforts to prevent retaliation;**

Amendment 84

Proposal for a directive

Article 14 – paragraph 1 – point n g (new)

Text proposed by the Commission

Amendment

**(ng) initiation of retaliatory lawsuits or
prosecutions;**

Amendment 85

Proposal for a directive

Article 14 – paragraph 1 – point n h (new)

Text proposed by the Commission

Amendment

**(nh) wilful ignorance of the retaliation
by a supervisor or supervisory body who
are tasked with monitoring the protected**

person;

Amendment 86

Proposal for a directive

Article 14 – paragraph 1 – point n i (new)

Text proposed by the Commission

Amendment

(ni) denying the rights of defence, including excessive delays in the handling of cases within the place of work;

Amendment 87

Proposal for a directive

Article 14 – paragraph 1 – point n j (new)

Text proposed by the Commission

Amendment

(nj) all other actions that could deter workers from exercising their rights protected by the Directive;

Amendment 88

Proposal for a directive

Article 14 – paragraph 1 – point n k (new)

Text proposed by the Commission

Amendment

(nk) breaching the confidentiality and anonymity of the reporting person and other persons protected by this Directive.

Amendment 89

Proposal for a directive

Article 15 – paragraph 7

Text proposed by the Commission

Amendment

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of

secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.

secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal *of proceedings*.

Amendment 90

Proposal for a directive

Article 15 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Reporting persons shall have access to psychological support.

Justification

To be added as 9 new

Amendment 91

Proposal for a directive

Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

No Waiver of Rights and Remedies

The rights and remedies provided for under this Directive may not be waived or limited by any agreement, policy, form or condition of employment, including by any pre-dispute arbitration agreement. Any attempt to waive or limit these rights and remedies shall be considered void and unenforceable and may be subject to penalty or sanction.

Amendment 92

Proposal for a directive

Article 19

Text proposed by the Commission

Member States may introduce or retain provisions more favourable to the rights of the reporting persons than those set out in this Directive, without prejudice to Article 16 and Article 17(2).

Amendment

Member States may introduce or retain provisions more favourable to the rights of the reporting persons than those set out in this Directive ***and establish reporting systems on national provisions***, without prejudice to Article 16 and Article 17(2).

Amendment 93

**Proposal for a directive
Article 20 a (new)**

Text proposed by the Commission

Amendment

Article 20a

Non-regression clause

- 1. The implementation of this Directive shall under no circumstances constitute valid grounds for reducing the general level of protection already afforded when reporting on breaches other than those mentioned in Article 1.***
- 2. This Directive is without prejudice to any other rights conferred on reporting persons by other legal acts of the Union.***

Amendment 94

**Proposal for a directive
Annex I**

Text proposed by the Commission

Amendment

[...]

deleted

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protection of persons reporting on breaches of Union law	
References	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)	
Committee responsible Date announced in plenary	JURI 28.5.2018	
Opinion by Date announced in plenary	EMPL 28.5.2018	
Rapporteur Date appointed	Neoklis Sylikiotis 14.6.2018	
Discussed in committee	11.7.2018	29.8.2018
Date adopted	24.9.2018	
Result of final vote	+: 34 –: 3 0: 5	
Members present for the final vote	Guillaume Balas, Brando Benifei, David Casa, Ole Christensen, Michael Detjen, Anna Hedh, Geoffroy Didier, Marian Harkin, Agnes Jongerius, Rina Ronja Kari, Lampros Fountoulis, Agnieszka Kozłowska-Rajewicz, Jean Lambert, Jeroen Lenaers, Thomas Mann, Elisabeth Morin-Chartier, Emilian Pavel, Javi López, Flavio Zanonato, Miroslavs Mitrofanovs, Marek Plura, Dennis Radtke, Enrique Calvet Chambon; Martina Dlabajová, Renate Weber, Anthea McIntyre, Jana Žitňanská, Robert Rochefort	
Substitutes present for the final vote	Maria Arena, Georges Bach, Tania González Peñas, Eduard Kukan, Deirdre Clune, Birgit Sippel, António Marinho e Pinto, Helga Stevens, Amjad Bashir, Lynn Boylan, Monika Vana, Paloma López Bermejo, Neoklis Sylikiotis, Csaba Sógor	
Substitutes under Rule 200(2) present for the final vote		

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

34	+
ALDE	Marian Harkin, António Marinho e Pinto
GUE	Lynn Boylan, Tania González Peñas, Rina Ronja Kari, Paloma López Bermejo, Neoklis Sylikiotis
PPE	Georges Bach, David Casa, Geoffroy Didier, Deirdre Clune, Agnieszka Kozłowska-Rajewicz, Eduard Kukan, Jeroen Lenaers, Thomas Mann, Elisabeth Morin-Chartier, Marek Plura, Dennis Radtke, Csaba Sógor
S&D	Maria Arena, Guillaume Balas, Brando Benifei, Michael Detjen, Ole Christensen, Anna Hedh, Agnes Jongerius, Javi López, Emilian Pavel, Birgit Sippel, Flavio Zanonato
VERTS/ALE	Jean Lambert, Miroslavs Mitrofanovs, Monika Vana
NI	Lampros Fountoulis

3	-
ALDE	Enrique Calvet Chambon; Martina Dlabajová, Renate Weber

5	0
ALDE	Robert Rochefort
ECR	Amjad Bashir, Anthea McIntyre, Helga Stevens, Jana Žitňanská

Key to symbols:

+ : in favour

- : against

0 : abstention