



2016/2224(INI)

6.9.2017

OPINION

of the Committee on Economic and Monetary 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 (*): Molly Scott Cato

(*) Associated committee – Rule 54 of the Rules of Procedure

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SUGGESTIONS

The Committee on Economic and Monetary 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 whistle-blowers have played a prominent role in detecting and reporting suspected misconduct, wrongdoing, fraud or illegal activity, as well as in identifying and publishing tax-related public interest cases, including in the LuxLeaks, SwissLeaks and Panama Papers revelations, thus contributing substantially to increased reforms to combat financial and tax fraud, money laundering and corruption, which hamper economic development and the rule of law;
- B. whereas since the economic, debt and financial crisis, we have seen a wave of action against international tax avoidance and evasion; whereas more transparency in the financial services sphere is needed in order to discourage malpractice, and some Member States have already experience with central repositories for reporting actual or possible breaches of financial prudential rules; whereas the United Nations adopted its Convention against Corruption in 2003¹; whereas Parliament has established two special committees and one committee of inquiry following these revelations; whereas it has already called for protection of whistle-blowers in several resolutions²; whereas the initiatives already agreed upon to strengthen international information exchange in tax matters have been helpful, and whereas the various tax-related leaks have revealed large amounts of important information on malpractices that would otherwise not have surfaced;
- C. whereas, while the focus of global anti-corruption efforts have thus far predominantly been focused on public sector wrongdoings, recent leaks have highlighted the role of financial institutions, advisers and other private companies in facilitating corruption;
- D. whereas the introduction of public beneficial ownership registries for company trusts, and similar legal arrangements and other transparency measures for investment vehicles, may act as a counter-deterrent against the wrongdoings that whistle-blowers typically address;
- E. whereas whistle-blowing is very often not restricted to economic and financial matters; whereas the lack of adequate protection could dissuade potential whistle-blowers from reporting misconduct in order to avoid the risk of reprisal and/or retaliation; whereas the OECD has reported that in 2015, 86 % of companies had a mechanism to report suspected instances of serious corporate misconduct, but over one-third of them did not have a written policy on protecting whistle-blowers from reprisals, or did not know if such a policy existed; whereas several whistle-blowers exposing economic and financial wrongdoings, misconducts or illegal activities have been subject to prosecution; whereas persons who report or disclose information in the public interest often suffer reprisals, as do family members and colleagues, resulting, for example, in the loss of their careers; whereas the European Court of Human Rights has a well-established case law regarding

¹ https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

² See e.g. its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (Texts adopted, P8_TA(2016)0310) and its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union' (Texts adopted, P8_TA(2015)0457).

whistle-blowers, but the protection of whistle-blowers should be guaranteed by law; whereas the Charter of Fundamental Rights of the European Union ensures the freedom of expression and the right to good administration;

- F. whereas it is regrettable that the existing channels for making formal complaints about misconduct by multinational companies rarely result in any concrete punishments for wrongdoings;
- G. whereas, while the protection of whistle-blowers at Union level has neither been implemented in all Member States nor harmonised at EU level, most Member States have ratified the UN Convention against Corruption, making it obligatory to provide appropriate and effective protection to whistle-blowers;
- H. whereas EU law already contains certain provisions protecting whistle-blowers against reprisals, including with regard to money laundering, but does not yet provide for horizontal legislation applying to all public and private bodies; whereas fragmented provisions could prove to be unclear and inefficient; whereas the Commission is therefore asked to make a thorough evaluation of the legal bases for possible further action at EU level in this regard; whereas effective protection of whistle-blowers would contribute to the efficiency of the internal market and reinforce citizens' trust in the EU;
1. Urges the Commission to make a thorough assessment of the possible legal basis for further action at EU level and, if appropriate, to submit comprehensive horizontal legislation, including tools to support whistle-blowers to ensure their effective protection as soon as possible, and to come forward with a proposal to ensure adequate financial assistance to whistle-blowers; calls on the Commission to assess the possibility of creating an independent European body with the competence of receiving whistle-blowers' complaints, including in an anonymous and confidential manner, and, when justified, of providing advice and protection; notes that whistle-blower protection should cover public and private sector without distinction; calls for such legislation to ensure that companies that take fully verified retaliatory action against whistle-blowers may not receive EU funds nor enter into contracts with public bodies; suggests that, in any case, the Commission produce an annual report assessing the current state of protection of whistle-blowers in the European Union; suggests that international agreements pertaining to financial services, taxation and competition should include provisions on the protection of whistle-blowers; suggests the creation of a pan-European common fund for whistle-blower protection, with a view to ensuring adequate financial assistance to whistle-blowers;
 2. Emphasises the unreasonable and worrying fact that citizens and journalists are being subject to prosecution rather than legal protection when disclosing information in the public interest, including information on suspected misconduct, wrongdoing, fraud or illegal activity, particularly when it comes to conduct violating fundamental principles of the EU, such as tax avoidance, tax evasion and money laundering;
 3. Calls, furthermore, on the Member States to adopt a broad legal definition of whistle-blower with a view to protecting them effectively through national legislation; suggests that whistle-blowers in the public and private sectors should enjoy equal protection, and should not be bound by any contractual obligation preventing reports or disclosures that are in the public interest; calls on the Member States to ensure that the protection includes

exemptions from proceedings related to the protected disclosure and disciplinary measures or other forms of reprisal;

4. Calls on the Member States to take into consideration Article 33 of the UN Convention against corruption, underlining the role of whistle-blowers in the prevention of, and fight against, corruption;
5. Recalls the conclusion of its TAXE special committee, and points out the need to ensure that whistle-blowers are able to report not only illegal activities, but also wrongdoing and any information on matters that represent a threat or harm to the public interest;
6. Reiterates that whistle-blowers may often provide the only means of bringing illegal activities to the public notice, given the often technical nature of the information in question and the barriers that public officials face in their attempts to access it;
7. Argues that whistle-blowers should be free to report anonymously, or to lodge complaints, as a matter of priority, to the internal reporting mechanisms of the organisation concerned or to the competent authorities, and, further, that they should be protected, regardless of their choice of reporting channel;
8. Stresses the importance of explicitly empowering competent authorities, and regulatory and law enforcement bodies, with the responsibility of maintaining reporting channels, and of receiving, handling and investigating reports on suspected malpractice, while safeguarding the confidentiality of sources, where applicable, and the rights of the affected parties;
9. Considers that all EU and national public and private organisations should have internal whistle-blowing procedures for their employees; underlines the importance of awareness-raising, among employees and other individuals, of already existing legal frameworks on whistle-blowing, and calls on EU and national bodies to conduct regular information campaigns and to provide multilingual and comprehensible information on the basic procedures of whistle-blowing;
10. Requests that the forthcoming review of the European Supervisory Authorities (ESAs) adapts their powers and procedures with regard to protecting whistle-blowers;
11. Stresses that in litigation procedures against whistle-blowers, the burden of proof should fall on the party initiating the litigation to demonstrate that the information revealed does not constitute proof of either illegal conduct or wrongdoing, nor of a threat to the public interest; condemns legal proceedings against whistle-blowers that are purposely conducted in bad faith, in response to which sanctions should be appropriate; stresses that effective whistle-blower protection is essential to guaranteeing the right to free speech and freedom of information, and that conflicting norms which govern matters of secrecy and confidentiality should be reviewed in line with European human rights jurisprudence, so as to ensure that such exceptions are necessary and proportionate;
12. Calls on the Member States to ensure that whistle-blowers have unhindered access to independent advice and support, and can claim compensation for harassment, or for the loss of current or future livelihood, as means of retaliation for disclosures made under whistle-blower protection; calls on the Commission to investigate whether there are any

best practices available that could be shared to this end;

13. Calls on the EU institutions and other EU bodies to lead by example by applying, without delay, the European Ombudsman guidelines; calls on the Commission to fully implement, both for itself and for EU agencies, their own guidelines protecting whistle-blowers in accordance with its 2012 staff regulations; calls on the Commission to effectively cooperate and coordinate efforts with other institutions, including the European Public Prosecutor's Office, to protect whistle-blowers;
14. Stresses that communication between whistle-blowers and EU institutions and agencies must be strengthened; considers that complaints from citizens must be treated fairly and with respect, and that there should be continuous contact between the EU institution or agency dealing with a complaint and the whistle-blower concerned, with regular updates on the case;
15. Urges the Commission to provide a comprehensive action plan on raising awareness about the protection and defence of whistle-blowers;
16. Points to the need for a better system for reporting corporate malpractices, one that complements and seeks to improve the efficiency of the current National Contact Points for the OECD Guidelines for Multinational Enterprises;
17. Calls on the Commission to provide a comprehensive plan to discourage asset transfers to countries outside the EU where the anonymity of corrupt persons can be maintained;
18. Stresses the need for more attention to business ethics in the educational curricula of business studies and related disciplines.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	4.9.2017						
Result of final vote	<table style="width: 100%; border: none;"> <tr> <td style="width: 100px;">+:</td> <td style="text-align: right;">36</td> </tr> <tr> <td>-:</td> <td style="text-align: right;">0</td> </tr> <tr> <td>0:</td> <td style="text-align: right;">13</td> </tr> </table>	+:	36	-:	0	0:	13
+:	36						
-:	0						
0:	13						
Members present for the final vote	Gerolf Annemans, Burkhard Balz, Pervenche Berès, Udo Bullmann, Esther de Lange, Markus Ferber, Jonás Fernández, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Cătălin Sorin Ivan, Petr Ježek, Othmar Karas, Wajid Khan, Philippe Lamberts, Werner Langen, Bernd Lucke, Olle Ludvigsson, Fulvio Martusciello, Marisa Matias, Gabriel Mato, Costas Mavrides, Bernard Monot, Luděk Niedermayer, Dimitrios Papadimoulis, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Marco Valli, Jakob von Weizsäcker, Marco Zanni						
Substitutes present for the final vote	Enrique Calvet Chambon, Matt Carthy, Manuel dos Santos, Ashley Fox, Eva Joly, Paloma López Bermejo, Thomas Mann, Luigi Morgano, Lieve Wierinck						
Substitutes under Rule 200(2) present for the final vote	Elżbieta Katarzyna Łukacijewska						

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

36	+
ALDE	Enrique Calvet Chambon, Petr Ježek, Ramon Tremosa i Balcells, Lieve Wierinck
ECR	Bernd Lucke, Pirkko Ruohonen-Lerner
EFDD	Marco Valli
ENF	Gerolf Annemans, Bernard Monot
GUE/NGL	Matt Carthy, Paloma López Bermejo, Marisa Matias, Dimitrios Papadimoulis
PPE	Brian Hayes, Othmar Karas, Werner Langen, Thomas Mann
S&D	Pervenche Berès, Udo Bullmann, Jonás Fernández, Neena Gill, Roberto Gualtieri, Cătălin Sorin Ivan, Wajid Khan, Olle Ludvigsson, Costas Mavrides, Luigi Morgano, Alfred Sant, Pedro Silva Pereira, Peter Simon, Paul Tang, Manuel dos Santos, Jakob von Weizsäcker
Verts/ALE	Eva Joly, Philippe Lamberts, Molly Scott Cato

0	-

13	0
ECR	Ashley Fox, Kay Swinburne
ENF	Marco Zanni
PPE	Burkhard Balz, Markus Ferber, Gunnar Hökmark, Danuta Maria Hübner, Elżbieta Katarzyna Łukacijewska, Fulvio Martusciello, Gabriel Mato, Luděk Niedermayer, Anne Sander, Esther de Lange

Key to symbols:

+ : in favour

- : against

0 : abstention