



2018/0106(COD)

3.10.2018

OPINION

of the Committee on Constitutional 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: Ramón Jáuregui Atondo

PA_Legam

SHORT JUSTIFICATION

As shown in recent scandals such as LuxLeaks, WikiLeaks, Panama Papers, Paradise Papers, Dieselgate etc., whistleblowers provide a fundamental service to the whole community. They play an invaluable role in safeguarding the general interest, constitute an essential source of information in the fight against corruption, fraud and other unlawful activities, and contribute decisively to a culture of transparency, accountability and integrity in both the public and private sectors. At EU level the effective protection of whistleblowers is not only key to ensuring the efficiency of the policy areas potentially concerned, but it is also necessary to meet the societal expectations prompted by those scandals and thus reinforce citizens' trust in the EU Institutions. After privileging a sectoral approach, notably in the area of financial services, the Commission has now put forward a proposal for a directive having a more comprehensive scope and providing general rules for the protection of persons reporting on breaches of Union law.

Your rapporteur considers this new approach as very promising and suggests amendments to the proposal with a view to strengthening the legal framework for the protection of whistleblowers. In particular, he recommends that the material scope of the proposal should include violations of the common values of the EU referred to in Article 2 TEU and breaches committed through political acts. He also proposes the inclusion of the officials and the other servants of the EU and the EAEC among those eligible for protection and provisions reinforcing the role of criminal law in implementing the proposed directive. Finally, stronger protection in case of frivolous or vexatious legal proceedings against whistleblowers is part of the rapporteur's suggestions.

AMENDMENTS

The Committee on Constitutional 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 a (new)

Text proposed by the Commission

Amendment

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

Amendment 2

Proposal for a directive Citation 1 b (new)

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

Amendment 3

Proposal for a directive

Recital 1

Text proposed by the Commission

(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.

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 ***cases of unlawful activities or abuse of law which may occur in this context and amount to*** threats or harm 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 ***and the public interest***. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation.

Justification

A more precise wording is suggested.

Amendment 4

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) At Union level, reports by whistleblowers are one upstream component of enforcement of Union law: they feed national and Union enforcement systems with information leading to effective detection, investigation and prosecution of breaches of Union law.

Amendment

(2) At Union level, reports ***and disclosures*** by whistleblowers are one upstream component of enforcement of Union law: they feed national and Union enforcement systems with information leading to effective detection, investigation and prosecution of breaches of Union law.

Amendment 5

Proposal for a directive

Recital 3

Text proposed by the Commission

(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. 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.

Amendment

(3) In certain policy areas, breaches of Union law may cause harm to the public interest, in the sense of creating significant risks for the welfare of society *and undermine citizens' trust in the Union's action*. 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, *confidential and safe* reporting channels.

Amendment 6

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) Accordingly, common minimum standards ensuring effective whistleblower protection should apply in those acts and policy areas where i) there is a need to strengthen enforcement; ii) under-reporting by whistleblowers is a key factor affecting enforcement, and iii) breaches of Union law cause *serious* harm to the public interest.

Amendment

(5) Accordingly, common minimum *legal* standards ensuring effective whistleblower protection should apply in those acts and policy areas where i) there is a need to strengthen enforcement; ii) under-reporting by whistleblowers is a key factor affecting enforcement, and iii) breaches of Union law cause harm to the public interest. *At the same time, it is of fundamental importance that the reputation of the entities concerned is ensured, particularly if the subject of the report has not yet been proven.*

Amendment 7

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment remain a challenge and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018⁴⁰. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection⁴¹, the introduction of such protection appears necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause *serious* harm to the public interest with possible spill-over impacts across national borders. This is also relevant in cases where unsafe products can cause environmental harm.

⁴⁰ COM(2018) 10 final.

⁴¹ Directive 2013/30/EU of the European Parliament and of the Council, of 12 June 2013, on safety of offshore oil and gas operations (OJ L 178, p. 66).

Amendment 8

Proposal for a directive Recital 14

Text proposed by the Commission

(14) The protection of privacy and personal data is another area where whistleblowers are in a privileged position to disclose breaches of Union law which can *seriously* harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems⁴⁵, which introduces notification of incidents (including those that do not compromise personal data) and security requirements for entities providing essential services

Amendment

(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment remain a challenge and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018⁴⁰. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection⁴¹, the introduction of such protection appears necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause harm to the public interest with possible spill-over impacts across national borders. This is also relevant in cases where unsafe products can cause environmental harm.

⁴⁰ COM(2018) 10 final.

⁴¹ Directive 2013/30/EU of the European Parliament and of the Council, of 12 June 2013, on safety of offshore oil and gas operations (OJ L 178, p. 66).

Amendment

(14) The protection of privacy and personal data is another area where whistleblowers are in a privileged position to disclose breaches of Union law which can harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems⁴⁵, which introduces notification of incidents (including those that do not compromise personal data) and security requirements for entities providing essential services across many sectors (e.g.

across many sectors (e.g. energy, health, transport, banking, etc.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable to prevent security incidents that would affect key economic and social activities and widely used digital services. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.

energy, health, transport, banking, etc.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable to prevent security incidents that would affect key economic and social activities and widely used digital services. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.

⁴⁵ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

⁴⁵ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

Amendment 9

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) The protection of the financial interests of the Union, which relates to the fight against fraud, corruption and any other illegal activity affecting the use of Union expenditures, the collection of Union revenues and funds or Union assets, is a core area in which enforcement of Union law needs to be strengthened. The strengthening of the protection of the financial interests of the Union also encompasses implementation of the Union budget related to expenditures made on the basis of the Treaty establishing the European Atomic Energy Community. Lack of effective enforcement in the area of the financial interests of the Union, including fraud and corruption at national level, causes a decrease of the Union revenues and a misuse of EU funds, which can distort public investments and growth and undermine citizens' trust in EU action. Whistleblower protection is necessary to

Amendment

(16) The protection of the financial interests of the Union, which relates to the fight against fraud, corruption, ***the infringement of legal obligations, abuse of power*** and any other illegal activity affecting the use of Union expenditures, the collection of Union revenues and funds or Union assets, is a core area in which enforcement of Union law needs to be strengthened. The strengthening of the protection of the financial interests of the Union also encompasses implementation of the Union budget related to expenditures made on the basis of the Treaty establishing the European Atomic Energy Community. Lack of effective enforcement in the area of the financial interests of the Union, including fraud and corruption at national level, causes a decrease of the Union revenues and a misuse of EU funds, which can distort public investments and growth and undermine citizens' trust in EU

facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.

action. Whistleblower protection is necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.

Amendment 10

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse⁴⁹ and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation⁵⁰, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list in Part II of the Annex, should be complemented by the present Directive, so that these instruments are fully aligned with its minimum standards whilst maintaining any specificities they provide for, tailored to the relevant sectors. This is of particular importance for ascertaining which legal entities in the area of financial services and the prevention of money laundering and terrorist financing are currently obliged to establish internal reporting channels.

⁴⁹ OJ L 173, p. 1

⁵⁰ Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation (OJ L 332, p. 126).

Amendment

(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse⁴⁹ and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation⁵⁰, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list in Part II of the Annex, should be complemented by the present Directive, so that these instruments are fully aligned with its minimum standards whilst maintaining any specificities they provide for, tailored to the relevant sectors. This is of particular importance for ascertaining which legal entities in the area of financial services and the prevention of **and the fight against** money laundering and terrorist financing are currently obliged to establish internal reporting channels.

⁴⁹ OJ L 173, p. 1

⁵⁰ Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation (OJ L 332, p. 126).

Amendment 11

Proposal for a directive

Recital 18 a (new)

Text proposed by the Commission

Amendment

(18 a) In order to make full use of the provisions of this Directive, activities that are not deemed to be unlawful, but which would likely be detrimental to the public interest, should be potential subjects of reporting. A provision should thus be included to ensure that, in cases where reports relate to these activities, the reporting person is entitled to protection laid out in this Directive.

Amendment 12

Proposal for a directive Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) The material scope of this Directive would not be complete if it did not include protection for those reporting breaches of the common values of the Union referred to in Article 2 TEU or of the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union ('the Charter').

(See amendments to Recital 22 and to Article 1 – paragraph 1 – point d a (new))

Amendment 13

Proposal for a directive Recital 18 c (new)

Text proposed by the Commission

Amendment

(18c) In order to achieve the objectives of this Directive, the unlawful activities which are eligible for reporting should be defined as broadly as possible. In particular, acts of a political nature adopted by a legal entity in the public sector, and amounting to a threat or harm

to the public interest, could constitute breaches of Union law. Consequently, a provision should be included to the effect that, if information on such breaches is reported, the reporting person will be entitled to enjoy protection under this Directive.

(See amendment to Article 1 – paragraph 1 a (new))

Amendment 14

Proposal for a directive Recital 22

Text proposed by the Commission

(22) Persons who report information about threats or harm to the public interest obtained in the context of their work-related activities make use of their right to freedom of expression. The right to freedom of expression, enshrined in Article 11 of the Charter *of Fundamental Rights of the European Union ('the Charter')* and in Article 10 of the European Convention on Human Rights (ECHR), encompasses media freedom and pluralism.

Amendment

(22) Persons who report information about threats or harm to the public interest obtained in the context of their work-related activities make use of their right to freedom of expression. The right to freedom of expression, enshrined in Article 11 of the Charter and in Article 10 of the European Convention on Human Rights (ECHR), encompasses media freedom and pluralism.

(See amendment to Recital 18a (new))

Justification

The Charter is already mentioned in full in Recital 18 a (new).

Amendment 15

Proposal for a directive Recital 24

Text proposed by the Commission

(24) Persons need specific legal protection where they acquire the information they report through their work-related activities and therefore run the risk

Amendment

(24) Persons need specific legal protection where they acquire the information they report through their work-related activities and therefore run the risk

of work-related retaliation (for instance, for breaching the duty of confidentiality or loyalty). The underlying reason for providing them with protection is their position of economic vulnerability vis-à-vis the *person on whom they de facto* depend for work. When there is no such work-related power imbalance (for instance in the case of ordinary complainants or citizen bystanders) there is no need for protection against retaliation.

of work-related retaliation (for instance, for breaching the duty of confidentiality or loyalty). The underlying reason for providing them with protection is their position of economic vulnerability vis-à-vis the *entity on which they* depend for work. When there is no such work-related power imbalance (for instance in the case of ordinary complainants or citizen bystanders) there is no need for protection against retaliation.

Justification

A more appropriate wording is suggested.

Amendment 16

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 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.

⁵² Judgments of 3 July 1986, Lawrie-Blum,

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 services for and under the direction of another person, in return of 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 *other* 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.

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, Ruhrlandklinik, Case C-216/15.

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, Ruhrlandklinik, Case C-216/15.

Amendment 17

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 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

Amendment

(27) Protection should also extend to **people facilitating the reporting, such as 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 or social or political-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 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

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.

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 18

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28 a) Finally, protection should be granted to officials and other servants of the European Union and the European Atomic Energy Community who, in the course or in connection with the performance of their duties, report breaches of Union law falling within the scope of this Directive. Such persons could have professional contacts with legal entities in the private and in the public sector in one or more Member States and can become aware, on that ground, of unlawful activities which, if reported, might expose them to retaliation-for instance in the form of intimidation, harassment or damage to their reputation-in the Member States concerned. At the same time, this Directive should be without prejudice to Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC)^{1a}.

^{1a} Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ

(See amendment to Article 2 – paragraph 2 a (new))

Justification

Officials and other servants of the EU and the EAEC who report illegal activities are covered by Articles 22a-22c of the Staff Regulations. These provisions, however, only apply to the EU Institutions, and not to Member States. This amendment seeks to grant protection from any form of retaliation these reporting persons may suffer from outside the EU Institutions

Amendment 19

Proposal for a directive

Recital 29

Text proposed by the Commission

(29) Effective detection and prevention of *serious* harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but also abuse of law, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law.

Amendment

(29) Effective detection and prevention of harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but also abuse of law, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law ***or constitute a danger or potential threat to the public interest.***

Amendment 20

Proposal for a directive

Recital 30 a (new)

Text proposed by the Commission

Amendment

(30 a) Effective protection implies a resource office available to inform whistleblowers on their rights, disclosure options, and limitations so they are aware of their rights and responsibilities.

Amendment 21

Proposal for a directive

Recital 31

Text proposed by the Commission

(31) Retaliation expresses the *close* (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person, so that this person can enjoy legal protection. Effective protection of reporting persons as a means of enhancing the enforcement of Union law requires a broad definition of retaliation, encompassing any act or omission occurring in the work-related context which causes them detriment.

Amendment

(31) Retaliation expresses the (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person, so that this person can enjoy legal protection. Effective protection of reporting persons as a means of enhancing the enforcement of Union law requires a broad definition of retaliation, encompassing any act or omission occurring in the work-related context which causes them detriment.

Justification

Demonstrating a 'close' connection could be too onerous for the reporting person.

Amendment 22

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.

Amendment

(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. ***Furthermore, whistleblowers and journalists are often involved in unfounded lawsuits brought against them by law firms engaged in defamation and extortion in order to frighten the reporting persons and force them to resort to costly legal defences. Those practices should be strongly***

condemned and therefore should be covered by this Directive.

(See amendment to Article 14 – paragraph 1 – point n a (new))

Amendment 23

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) It is for the Member States to identify the authorities competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive. These may be regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent shall have the necessary capacities and powers to assess the accuracy of the allegations made in the report and to address the breaches reported, including by launching an investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate.

Amendment

(34) It is for the Member States to identify the authorities competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive ***which have the highest possible degree of independence and impartiality.*** These may be regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent shall have the necessary capacities and powers to assess the accuracy of the allegations made in the report and to address the breaches reported, including by launching ***or requesting*** an investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate. ***The staff serving in those bodies shall be specialised and have proper training and formation.***

Amendment 24

Proposal for a directive

Recital 41 a (new)

Text proposed by the Commission

Amendment

(41 a) Generally speaking, and for all those activities and entities covered by this Directive, external and internal reporting channels should be coordinated effectively so as to cover as many situations as possible.

Amendment 25

Proposal for a directive Recital 42 a (new)

Text proposed by the Commission

Amendment

(42 a) Arrangements for anonymous reporting or disclosure shall be in place and anonymous reporting or disclosure shall not be prohibited. While this Directive does not intend to regulate the arrangements for such reporting or public disclosure, they shall not be excluded entirely from its scope. Thus, in cases where reporting persons wish to remain anonymous, their identity must not be disclosed. However, in the event that their identity is revealed, they should be eligible for protection under this Directive and the confidentiality of their identity should continue to be ensured;

Amendment 26

Proposal for a directive Recital 44 a (new)

Text proposed by the Commission

Amendment

(44 a) The confidentiality of the reporting person and anyone involved must be ensured so that the reporting process runs as smoothly as possible without any impediment, and so that self-censorship is avoided. Indeed, the protection of personal data is laid down in Union law and in national law, and said data requires all the more protection in the event of reporting.

Amendment 27

Proposal for a directive Recital 57

Text proposed by the Commission

(57) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate.

Amendment

(57) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate, ***respecting, where possible, the confidentiality of the reporting person.***

Amendment 28

Proposal for a directive
Recital 63

Text proposed by the Commission

(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. In all such cases, persons reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, ***prevention***

Amendment

(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. In all such cases, persons reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, ***the fight***

and detection of money laundering and terrorist financing or in the area of financial services.

against and detection of money laundering and terrorist financing or in the area of financial services.

Amendment 29

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 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.

Amendment

(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken by their employer or customer/recipient of services 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 30

Proposal for a directive Recital 69

Text proposed by the Commission

(69) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude workers from reporting, to deny protection or to penalise them for having done so. At the same time, this Directive should not affect the protection of legal and other professional privilege as provided for under national law.

Amendment

(69) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude workers from reporting, to deny protection or to penalise them for having done so. ***In order to ensure effective protection, the reporting person should not incur liability for reporting under any legislative, regulatory or administrative provision, including of a criminal nature.*** At the same time, this Directive should not affect the protection of legal and other professional privilege as provided for under national law.

(See amendment to Article 15 – paragraph 4)

Amendment 31

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 enforcement of ***the*** law ***when implementing Union*** 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 32

Proposal for a directive

Article 1 – paragraph 1 – point a – point ii

Text proposed by the Commission

ii) financial services, ***the*** prevention of

Amendment

ii) financial services, ***the*** prevention of

money laundering and terrorist financing;

and the fight against money laundering and terrorist financing;

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point a – point viii

Text proposed by the Commission

Amendment

(viii) public health;

(viii) public health **and public safety**;

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point d

Text proposed by the Commission

Amendment

d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, as regards acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law.

d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, as regards acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law;

(See amendment to Article 1 – paragraph 1 – point d a (new))

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

d a) breaches affecting the common values of the Union referred to in Article 2 TEU and the rights, freedom and principles set out in the Charter.

(See amendment to Recital 18 a (new))

Justification

The scope of this Directive would not be complete if it did not include protection for those reporting possible violations of common values and fundamental rights of the EU.

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Breaches referred to in this Article shall include breaches which a legal entity in the public sector may commit through acts of a political nature.

(See amendment to Recital 18 b (new))

Justification

Acts of a political nature adopted by public entities may prove to be contrary to the public interest and constitute breaches of Union law. This amendment clarifies that, if these breaches are reported, they, too, entitle the reporting person to be protected under this Directive.

Amendment 37

Proposal for a directive

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not regulated in those sector-specific Union acts.

2. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not regulated in those sector-specific Union acts. ***This paragraph shall apply only in cases where the protection foreseen in sector-specific acts is higher than the one guaranteed by this Directive.***

Amendment 38

Proposal for a directive

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall have specific provisions on the protection of national security and other classified information which Union law or the laws, regulations or administrative provisions in force in the Member State concerned require, for security reasons, to be protected from unauthorised access.

Justification

Reflection in the text of the Directive what is established in whereas 21: "This Directive should be without prejudice to the protection of national security and other classified information which Union law or the laws, regulations or administrative provisions in force in the Member State concerned require, for security reasons, to be protected from unauthorised access."

Amendment 39

Proposal for a directive

Article 2 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive shall also apply to reporting persons whose work-based relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other pre-contractual negotiation.

2. This Directive shall also apply to reporting persons whose work-based relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other pre-contractual negotiation, **and to reporting persons whose working relationship has ceased.**

Justification

Reporting persons might suffer retaliation, of financial or other types, even after their working relationship has ceased.

Amendment 40

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. *Without prejudice to Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC), , this Directive shall also apply to the officials and the other servants of the European Union and the European Atomic Energy Community who, in the course or in connection with the performance of their duties, report information on any of the breaches referred to in Article 1.*

(See amendment to Recital 28 a (new))

Justification

Officials and other servants of the EU and the EAEC who report illegal activities are covered by Articles 22a-22c of the Staff Regulations. These provisions, however, only apply to the EU Institutions, and not to Member States. This amendment seeks to grant protection from any form of retaliation these reporting persons may suffer from outside the EU Institutions.

Amendment 41

Proposal for a directive

Article 3 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

(3) ‘abuse of law’ means acts or omissions falling within the scope of Union law which do not appear to be unlawful in formal terms but defeat the object or the purpose pursued by the applicable rules;

(3) ‘abuse of law’ means acts or omissions falling within the scope of Union law which do not appear to be unlawful in formal terms but defeat the object or the purpose pursued by the applicable rules ***or represent a danger or a potential danger to the public interest;***

Amendment 42

Proposal for a directive

Article 3 – paragraph 1 – point 12

Text proposed by the Commission

(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;

Amendment

(12) ‘retaliation’ means any threatened or actual act or omission prompted by the internal, external reporting *or disclosure and* which causes or may cause unjustified detriment to the reporting person, *suspected reporting person or their family members, relatives and facilitators*;

Amendment 43

**Proposal for a directive
Article 3 – paragraph 1 – point 13**

Text proposed by the Commission

(13) ‘follow-up’ means any action taken by the recipient of the report, made internally or externally, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including actions such as internal enquiry, investigation, prosecution, action for recovery of funds and closure;

Amendment

(13) ‘follow-up’ means any action taken by the recipient of the report, made internally or externally, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including actions such as internal enquiry, investigation, prosecution, action for recovery of funds and closure, *as well as any other relevant remedial action*;

Amendment 44

**Proposal for a directive
Article 3 – paragraph 1 – point 13 a (new)**

Text proposed by the Commission

Amendment

(13a) 'facilitator' means any natural or legal person who contributes to the report or assists a person reporting on breaches whit his report.

Amendment 45

**Proposal for a directive
Article 4 – paragraph 6 – introductory part**

Text proposed by the Commission

Amendment

6. The legal entities in the public sector referred to in paragraph 1 shall **be** the following:

6. The legal entities in the public sector referred to in paragraph 1 shall **include, in particular**, the following:

Justification

Article 4(6), point d) of the proposal, which mentions “other entities governed by public law”, implicitly confirms that the list of legal entities in the public sector falling within the scope of this Directive is not exhaustive. This amendment seeks to clarify the non-exhaustive nature of the list and adapts the introductory sentence accordingly.

Amendment 46

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

b) physical meetings with the person or department designated to receive reports, **properly minuted and with the minutes dated and signed by the reporter**.

Amendment 47

Proposal for a directive

Article 6 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

a) establish independent and autonomous external reporting channels, which are secure, ensure confidentiality **and guarantee that the identity of the reporting person will not be disclosed**, for receiving and handling information provided by the reporting person;

Amendment 48

Proposal for a directive

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. *Member States shall ensure that the national authorities can take adequate remedial action.*

Amendment 49

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall 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.

4. Member States shall 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 ***within reasonable time*** and that the reporting person is informed ***without delay***.

Amendment 50

Proposal for a directive Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access to non-authorised staff members of the competent authority;

b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information, ***offers an appropriate level of cybersecurity*** and prevents access to non-authorised staff members of the competent authority;

Amendment 51

Proposal for a directive Article 7 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

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

properly minuted and with the minutes dated and signed by the reporter.

Amendment 52

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that competent authorities have staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.

Amendment

1. Member States shall ensure that competent authorities have staff members dedicated to handling reports, ***while respecting confidentiality of persons reporting on breaches***. Dedicated staff members shall receive specific training for the purposes of handling reports.

Amendment 53

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

Text proposed by the Commission

a) the conditions under which reporting persons qualify for protection under this Directive;

Amendment

a) the conditions under which reporting persons ***and/or intermediators*** qualify for protection under this Directive;

Amendment 54

Proposal for a directive Article 10 – paragraph 1 – point g

Text proposed by the Commission

g) a statement clearly explaining that persons making information available to the competent ***authority*** in accordance with this Directive are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.

Amendment

g) a statement clearly explaining that persons making information available to the competent ***authorities and on internal reporting channels*** in accordance with this Directive are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such

disclosure.

Amendment 55

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. A reporting person shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive.

Amendment

1. A reporting person shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive ***regardless of the reporting channel chosen.***

Amendment 56

Proposal for a directive Article 13 – paragraph 2 – point d

Text proposed by the Commission

(d) he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report;

Amendment

(d) he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report ***and the gravity of the breach;***

Amendment 57

Proposal for a directive Article 13 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. If the identity of the author of an anonymous report is revealed at a later stage, he or she shall enjoy the protection provided for by this Directive under the same conditions as a reporting person whose identity was public knowledge when the report or public disclosure was

first made;

Amendment 58

Proposal for a directive

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

Text proposed by the Commission

Amendment

n a) manifestly unfounded lawsuits initiated with a view to seriously frightening the reporting persons.

(See amendment to Recital 33)

Amendment 59

Proposal for a directive

Article 15 – paragraph 4

Text proposed by the Commission

Amendment

4. Persons reporting *externally to competent authorities or making a public disclosure* in accordance with this Directive shall not be considered to have breached any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and incur liability of any kind in respect of such disclosure.

4. Persons reporting *or disclosing information concerning breaches of Union law detrimental to the public interest* in accordance with this Directive shall not be considered to have breached any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and incur liability of any kind, *including of a criminal nature*, in respect of such disclosure.

Justification

This amendment clarifies that all forms of reporting, whether internal or external, are included in this paragraph and that exemption from liability refers to criminal liability in the first place.

Amendment 60

Proposal for a directive

Article 15 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. *Where the legal proceedings instituted against the reporting persons are a clear consequence of their reporting and there is sufficient evidence that they have been initiated with frivolous, abusive or vexatious intent, the competent court shall sanction the applicant for abuse of procedure, including, where appropriate, by applying criminal penalties.*

Amendment 61

Proposal for a directive Article 15 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5 b. *Similarly, the reputation of the entity the reporting person is calling into question must be protected throughout the reporting procedure to ensure that any allegation that proves to be false does not have lasting consequences for the entity concerned.*

Amendment 62

Proposal for a directive Article 15 – paragraph 8

Text proposed by the Commission

Amendment

8. In addition to providing legal aid to reporting persons in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council⁶³, and in accordance with national law, Member States may provide for further measures of legal *and* financial assistance and support for reporting persons in the framework of legal proceedings.

8. In addition to providing legal aid to reporting persons in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council⁶³, and in accordance with national law, Member States may provide for further measures of legal, financial *and psychological* assistance and support for reporting persons in the framework of legal

proceedings.

⁶³ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

⁶³ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

Justification

In its opinion on legitimate measures to protect whistleblowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)), the Committee on Constitutional Affairs had already stressed the importance of psychological support for whistleblowers.

Amendment 63

Proposal for a directive

Article 17 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:

Amendment

1. Member States shall provide for effective, proportionate and dissuasive penalties, ***including, where appropriate, of a criminal nature***, applicable to natural or legal persons that:

Justification

A more comprehensive wording is suggested.

Amendment 64

Proposal for a directive

Article 17 – paragraph 1 – point d

Text proposed by the Commission

d) breach the duty of maintaining the confidentiality of the identity of reporting persons.

Amendment

d) breach the duty of maintaining the confidentiality of the identity of reporting persons ***or take actions that uncover or aim at uncovering the identity of the reporting persons in case of anonymous***

reporting.

Amendment 65

Proposal for a directive Annex I – part I – part B – title

Text proposed by the Commission

B Article 1(a)(ii) – financial services,
prevention of money laundering and
terrorist financing;

Amendment

B Article 1(a)(ii) – financial services,
prevention of and fight against money-
laundering and terrorist financing:

Amendment 66

Proposal for a directive Annex I – part II – part A – title

Text proposed by the Commission

A Article 1(a)(ii) – financial services,
prevention of money laundering and
terrorist financing:

Amendment

A Article 1(a)(ii) – financial services,
prevention of *and fight against* money
laundering and terrorist financing:

Amendment 67

Proposal for a directive Annex I – part II – part A – point 2 – introductory part

Text proposed by the Commission

2. Prevention *of* money laundering
and terrorist financing:

Amendment

2. Prevention *and fight against*
money laundering and terrorist financing:

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
Opinion by Date announced in plenary	AFCO 28.5.2018
Rapporteur Date appointed	Ramón Jáuregui Atondo 11.6.2018
Discussed in committee	11.7.2018
Date adopted	1.10.2018
Result of final vote	+: 12 –: 1 0: 9
Members present for the final vote	Mercedes Bresso, Elmar Brok, Richard Corbett, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Diane James, Ramón Jáuregui Atondo, Alain Lamassoure, Jo Leinen, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, Helmut Scholz, Pedro Silva Pereira, Barbara Spinelli, Kazimierz Michał Ujazdowski
Substitutes present for the final vote	Max Andersson, Enrique Guerrero Salom, Cristian Dan Preda, Jasenko Selimovic
Substitutes under Rule 200(2) present for the final vote	Ruža Tomašić

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

12	+
ALDE	Maite Pagazaurtundúa Ruiz, Jasenko Selimovic
ECR	Ruža Tomašić
PPE	Danuta Maria Hübner
S&D	Mercedes Bresso, Richard Corbett, Enrique Guerrero Salom, Ramón Jáuregui Atondo, Jo Leinen, Pedro Silva Pereira
VERTS/ALE	Max Andersson, Pascal Durand

1	-
NI	Diane James

9	0
GUE/NGL	Helmut Scholz, Barbara Spinelli
NI	Kazimierz Michał Ujazdowski
PPE	Elmar Brok, Esteban González Pons, Alain Lamassoure, Markus Pieper, Cristian Dan Preda, Paulo Rangel

Key to symbols:

+ : in favour

- : against

0 : abstention