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DRAFT REPORT

on the role of whistle-blowers in the protection of EU's financial interests
(2016/2055(INI))

Committee on Budgetary Control

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the role of whistle-blowers in the protection of EU's financial interests (2016/2055(INI))

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 thereof,
 - having regard to Articles 22a, 22b and 22c of the Staff Regulations of Officials working for any of the EU institutions,
 - having regard to its resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken¹,
 - having regard to the Decision of the European Ombudsman closing her own-initiative inquiry OI/1/2014/PMC concerning whistleblowing,
 - having regard to Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure²,
 - having regard to Article 9 of the Council of Europe Civil Law Convention on Corruption,
 - having regard to Article 22(a) of the Council of Europe Criminal Law Convention on Corruption,
 - having regard to Articles 8, 13 and 33 of the United Nations Convention Against Corruption,
 - having regard to Principle 4 of the OECD Recommendation on Improving Ethical Conduct in the Public Service,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A8-0000/2016),
- A. whereas in the context of the discharge procedure, Parliament needs as much information as possible relating to any such irregularities;
- B. whereas the European Court of Auditors provides Parliament with an excellent basis for its examinations, but cannot itself cover all individual expenditures;
- C. whereas the Commission and other EU institutions similarly provide Parliament with informative reports on their spending, but also rely on official reporting mechanisms;
- D. whereas the Union's many funds are subject to shared management by the Commission

¹ OJ C 208, 10.6.2016, p. 89.

² OJ L 157, 15.6.2016, p. 1.

and the Member States, which makes it difficult for the Commission to report on irregularities concerning individual projects;

- E. whereas Parliament regularly receives information from individual citizens or non-governmental organisations in respect of irregularities concerning individual projects funded entirely or in part from the Union budget;
- F. whereas whistle-blowers therefore play an important role in detecting and reporting irregularities in respect of the expenditures relating to the EU budget;
- G. whereas whistle-blowers play a particularly important role when it comes to the detection and reporting of corruption and fraud, as the parties directly involved in these criminal practices will actively try to conceal them from any official reporting mechanisms;
- H. whereas all the EU institutions have been obliged since 1 January 2014 to introduce internal rules protecting whistle-blowers who are officials of the EU institutions, in accordance with Articles 22a, 22b and 22c of the Staff Regulations, even though not all institutions have yet done so and the working group of the interinstitutional Preparatory Committee for Matters relating to the Staff Regulations, dealing with the protection of whistle-blowers, has not yet finished its work;
- I. whereas the protection of whistle-blowers at Member State level has not been harmonised, which means that even when the financial interests of the European Union are at stake, it may be risky for whistle-blowers to provide Parliament with information on irregularities;
- J. whereas in its resolution of 23 October 2013, Parliament called on the Commission to submit a legislative proposal by the end of 2013 establishing an effective and comprehensive European whistle-blower protection programme in the public and private sectors, to protect those who detect inefficient management and irregularities and report cases of national and cross-border corruption relating to EU financial interests; whereas, in addition, it called on the Member States to put in place appropriate and effective protection for whistle-blowers;
- K. whereas the Commission has so far failed to submit any legislative proposals aimed at the establishment of a European whistle-blower protection programme;
- L. whereas the protection of whistle-blowers in the Union has become even more urgent, as the Trade Secrets Directive limits the rights of whistle-blowers and may thus have an unintended discouraging effect on those who want to report irregularities in the context of Union funding from which individual companies have benefitted;
- M. whereas important work has already been undertaken by international organisations such as the OECD and the Council of Europe, who have developed recommendations in regard to the protection of whistle-blowers;
- N. whereas non-governmental organisations such as Transparency International have similarly developed international principles for whistle-blower legislation which should serve as a source of inspiration for EU initiatives in this regard;

1. Reiterates its call on the Commission to submit a legislative proposal establishing an effective and comprehensive European whistle-blower protection programme and, in particular, calls on the Commission to submit a legislative proposal before the end of this year protecting whistle-blowers as part of the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union, with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies;
2. Emphasises that whistle-blowing relating to the financial interests of the Union is the disclosure or reporting of wrongdoing, including, but not limited to, corruption, fraud, conflicts of interest and acts to cover up any of these;
3. Stresses that the definition of whistle-blowing includes the protection of those who disclose information with a reasonable belief that the information is true at the time it is disclosed, including those who make inaccurate disclosures in honest error;
4. Expresses the need to establish an independent EU institution with sufficient budgetary resources, in order to help whistle-blowers use the right channels to disclose their information on possible irregularities affecting the financial interests of the Union, while protecting their confidentiality and offering assistance against possible retaliatory measures;
5. Requests the establishment of a special office within Parliament for receiving information from whistle-blowers relating to the financial interests of the Union, which will also provide them with advice and help in protecting them against any possible retaliatory measures, until such time as an independent EU institution has been established as referred to in paragraph 4;
6. Calls on the Commission, and in particular on the European Anti-Fraud Office, to similarly set up procedures for receiving and protecting whistle-blowers who provide information on irregularities relating to the financial interests of the Union;
7. Calls on the Commission and on the Member States to provide Parliament with any information received from whistle-blowers affecting the financial interests of the Union;
8. Invites the Court of Auditors to include in its Annual Reports a specific section on the role of whistle-blowers in respect of the protection of the financial interests of the Union;
9. Reiterates its call on all EU institutions who have not yet done so to implement Article 22c of the Staff Regulations without further delay;
10. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

For the work of the Committee on Budgetary Control, the role of whistle-blowers has been a matter of concern since many years. In 2011, the Committee commissioned a study on 'Corruption and conflict of interest in the European institutions: the effectiveness of whistle-blowers', which contained a number of recommendations for the rights and duties of EU staff in this respect.

For the Committee not only EU staff reporting irregularities are of importance, but also external whistle-blowers. Whereas the revised EU staff regulations contain provisions on the protection of whistle-blowers, for other whistle-blowers it depends on the national legislation how they are protected, if at all. The situation varies from Member State to Member State. Hence, the need for a legislative instrument as well as an independent European institution protecting also external whistle-blowers, whenever the financial interests of the Union are at issue.

Admittedly, whistle-blowers are important to address irregularities in a broader sense, including those not immediately affecting the financial interests of the Union. The Rapporteur is of the opinion that the protection of whistle-blowers should also be addressed more broadly. He is aware of initiatives requesting the Commission to draft a proposal on the basis of, in particular, Articles 151 and 153(2)(b) TFEU, thus protecting whistle-blowers more generally, at least for workers.

The current report does not stand in the way of any such broader initiatives. Its legal basis is different as well as its scope, but the definition of whistle-blowing as well as the main protective instruments can help in strengthening the basis for a wider legislative proposal.