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20.1.2017

REPORT

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

Committee on Budgetary Control

Rapporteur: Dennis De Jong

PR_INI

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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 of the European Union,
- 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 Council of Europe recommendation CM/Rec(2014)7 on the protection of whistleblowers,
- 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 the inquiry of the office of the European Ombudsman of 2 March 2015 and to its call for the EU institutions to adopt the required rules on whistleblowing,
- having regard to the OECD publication on ‘Committing to effective whistle-blower protection’,
- having regard to the decision of the European Court of Human Rights in the case *Guja v. Moldova*, Application No 14277/04 of 12 February 2008,
- having regard to Article 6 of the Charter of Fundamental Rights of the European Union,

¹ OJ C 208, 10.6.2016, p. 89.

² OJ L 157, 15.6.2016, p. 1.

- having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Constitutional Affairs (A8-0004/2017),
- A. whereas in the context of the discharge procedure, Parliament needs as much information as possible relating to any such irregularities; whereas in cases concerning irregularities internal to the institutions, Parliament should be entitled to full access to information so that it can conduct the discharge procedure in full knowledge of the facts;
 - 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 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 preventing, detecting and reporting irregularities in respect of the expenditures relating to the EU budget, as well as in identifying and publicising cases of corruption; whereas a culture of trust fostering the European public good needs to be established and promoted in which EU officials and other staff, as well as the general public, feel safeguarded by sound management practices, and which shows that the EU institutions support, protect and encourage potential whistle-blowers;
 - G. whereas it is vital for a horizontal legal framework to be established as a matter of urgency, which, by laying down rights and obligations, protects whistle-blowers throughout the EU, as well as in the EU institutions (the protection of anonymity, provision of legal, psychological and, where necessary, financial assistance, access to various information channels, rapid response schemes, etc.);
 - H. whereas most EU Member States have ratified the UN Convention against Corruption, which makes it obligatory to provide appropriate and effective protection to whistle-blowers;
 - I. whereas whistleblowing is an essential source of information in the fight against organised crime and in the investigation of corruption in the public sector;
 - J. 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;
 - K. whereas whistleblowing, based on the principles of transparency and integrity, is essential;

the protection of whistle-blowers should therefore be guaranteed by law and reinforced throughout the EU, but only if the purpose of their action is to protect the public interest by acting in good faith in accordance with the jurisprudence of the European Court of Human Rights;

- L. whereas the authorities should not limit or reduce the ability of whistle-blowers and journalists to document and disclose illegal, unlawful or harmful practices, when revealing this information in good faith and the public interest is a priority;
- M. 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, 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; whereas part of the work done by that working group should be to assess the situation of whistle-blowers who have suffered negative consequences in the institutions, so as to establish best practices based on past experience; whereas those internal rules must take account of the management structure and of the specific characteristics of the various categories under the Staff Regulations;
- N. whereas protection of whistle-blowers at Member State level has neither been implemented in all Member States, nor harmonised, which means that even when the financial interests of the European Union are at stake, it may be personally and professionally risky for whistle-blowers to provide Parliament with information on irregularities; whereas it is precisely because people are afraid of what might happen to them owing to the lack of protection, and because they believe that no action will be taken, that irregularities are not reported, and the EU's financial interests are undermined as a result;
- O. whereas there is a need to ensure that any kind of retaliation against whistle-blowers will be suitably punished;
- P. 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 the EU's financial interests; whereas, in addition, it called on the Member States to put in place appropriate and effective protection for whistle-blowers;
- Q. whereas, the EU legislator has already provided for the protection of whistle-blowers in sectorial instruments including Directive 2013/30/EU on safety of offshore oil and gas operations, Regulation (EU) No 596/2014 on market abuse, Directive (EU) 2015/849 on money laundering and terrorist financing and Regulation (EU) No 376/2014 on occurrence reporting;
- R. 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;

- S. whereas important work has already been undertaken by international organisations such as the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe, who have developed recommendations in regard to the protection of whistle-blowers;
- T. whereas according to the OECD more than one third of organisations with a reporting mechanism did not have, or did not know of, a written policy on protecting those who report from reprisals;
- U. whereas non-governmental organisations such as Transparency International, Whistleblowing International Network, etc., have similarly developed international principles for whistle-blower legislation which should serve as a source of inspiration for EU initiatives in this regard;
- V. whereas the office of the European Ombudsman has a clear competence in relation to the investigation of complaints of EU citizens about maladministration in the EU institutions, but in itself plays no role in the protection of whistle-blowers in the Member States;
- W. whereas the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union introduced in its most recent version, in force since 1 January 2014, several provisions on whistleblowing;
- X. whereas the protection of whistle-blowers is essential for safeguarding the public good and the financial interests of the Union and for promoting a culture of public accountability and integrity in both public and private institutions;
- Y. whereas in many jurisdictions, and particularly in the private sector, employees are subject to duties of confidentiality with respect to certain information, which means that whistle-blowers might encounter disciplinary actions for reporting outside their organisation;
1. Deplores the fact that the Commission has so far failed to submit any legislative proposals aimed at establishing a minimum level of protection for European whistle-blowers;
 2. Urges the Commission to immediately submit a legislative proposal establishing an effective and comprehensive European whistle-blower protection programme which includes mechanisms for companies, public bodies and non-profit organisations 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;
 3. Maintains that whistle-blowers play an essential role in helping Member State and EU institutions and bodies prevent and tackle any breaches of the principle of integrity and misuse of power that threaten or violate public health and safety, financial integrity, the economy, human rights, the environment or the rule of law at European and national levels, or that raise unemployment, restrict or distort fair competition and undermine the trust of citizens in democratic institutions and processes; stresses that, in this regard, whistle-blowers contribute greatly to increasing the democratic quality of, and the trust in, public institutions by making them directly accountable to citizens and more transparent;

4. Notes that both the whistle-blowers and the public body or institution involved should ensure the legal protection of rights guaranteed by the EU Charter of Fundamental Rights and by national legal provisions;
5. Recalls that the Member States, as first consignees of EU funds, have an obligation to scrutinise the legality of how they are spent;
6. Notes that only a few Member States have introduced sufficiently advanced whistle-blower protection systems; calls on those Member States which have not yet adopted the principles to protect whistle-blowers in their domestic law, to do so as soon as possible;
7. Calls on the Member States to enforce effective anti-corruption rules and, at the same time, to properly implement European and international standards and guidelines concerning the protection of whistle-blowers in their national laws;
8. Regrets that many Member States have yet to put in place dedicated whistle-blower protection rules, notwithstanding the essential need of whistle-blower protection in the prevention of, and fight against, corruption, and despite the fact that whistle-blower protection is recommended in Article 33 of the UN Convention against Corruption;
9. 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, tax evasion and tax avoidance, money laundering, infiltration by organised crime and acts to cover up any of these;
10. Considers it necessary to foster an ethical culture helping to ensure that whistle-blowers will not suffer retaliation or face internal conflicts;
11. Reiterates the fact that a whistle-blower is required to inform about irregularities affecting the financial interests of the EU as well as the fact that whistle-blowers should always cooperate by sharing information with the competent EU authorities;
12. Reiterates the fact that whistle-blowers often have better access to sensitive information than outsiders, and thus may be more likely to experience negative consequences in their professional career or risk their personal safety, which is protected under Article 6 of the Charter of Fundamental Rights of the EU;
13. 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;
14. Stresses the role of investigative journalism and calls on the Commission to ensure that its proposal affords the same protection to investigative journalists as it does to whistle-blowers;
15. Expresses the need to establish an independent information-gathering, advisory and referral EU body, with offices in Member States which are in a position to receive reports of irregularities, with sufficient budgetary resources, adequate competences and appropriate specialists, in order to help internal and external whistle-blowers in using the right channels to disclose their information on possible irregularities affecting the

financial interests of the Union, while protecting their confidentiality and offering needed support and advice; in the first phase, its work would be primarily based on reliable verification of the information received;

16. Calls for the EU institutions, in cooperation with all relevant national authorities, to introduce and take all necessary measures to protect the confidentiality of the information sources in order to prevent any discriminatory actions or threats;
17. Welcomes the decision taken by the European Ombudsman in 2014 to launch an own-initiative investigation, addressing the EU institutions, into the protection of whistle-blowers, and welcomes the extremely positive outcomes that has had; calls for the institutions and other bodies of the EU that have yet to do so to apply, without delay, the guidelines that were drawn up upon conclusion of the investigation;
18. Calls for the EU institutions to raise awareness of the serious concerns of defenceless whistle-blowers; urges the Commission therefore to provide a comprehensive action plan on this issue;
19. Requests the establishment a special unit with a reporting line as well as dedicated facilities (e.g. hotlines, websites, contact points) 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;
20. Calls for a website to be launched where complaints can be submitted; stresses that the website should be accessible to the public and should keep their data anonymous;
21. Calls for the Commission to provide a clear legal framework that guarantees that those exposing illegal or unethical activities are protected from retaliation or prosecution;
22. Calls for the Commission to present concrete proposals for full protection of those who expose illegalities and irregularities, and to provide a comprehensive plan to discourage asset transfers to countries outside the EU that serve as protectors of anonymity to corrupt persons;
23. Expresses the need to ensure that reporting mechanisms are accessible, safe and secure, and that whistle-blowers' claims are professionally investigated;
24. Calls on the Commission, and on the European Public Prosecutor's Office in so far as it is within its mandate upon its establishment, to establish efficient channels of communication between the parties concerned, to likewise set up procedures for receiving and protecting whistle-blowers who provide information on irregularities relating to the financial interests of the Union, and to establish a single working protocol for whistle-blowers;
25. Calls on all EU institutions and bodies to take the necessary action to ensure recognition and consideration of, and respect for, whistle-blowers in all cases that affect or have affected them and that have been acknowledged as such by the Court of Justice of the European Union, and points out that this should apply retroactively; calls on them,

furthermore, to publicly and substantively report on the rulings concerned to the institution as a whole;

26. 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 and to include a chapter on their alerts and the follow-up to these in the annual activity reports; calls for action at EP level to establish the accuracy of information in order to take appropriate measures;
27. Calls on the Commission to carry out a public consultation to seek the view of stakeholders on the reporting mechanisms and on the potential shortcomings of the procedures at national level; the results of the public consultation will represent a valuable input for the Commission when preparing its future proposal on whistle-blowing;
28. Invites the independent EU body, and until established, the European Anti-Fraud Office (OLAF) to write and publish an annual report on the evaluation of the protection of whistle-blowers in the European Union;
29. Further invites the Court of Auditors to include in its annual reports a specific section on the role of whistle-blowers in protecting the financial interests of the Union;
30. Invites the EU agencies to provide a written policy on protecting those who report from reprisals;
31. Welcomes the fact that Parliament, the Commission, the Council of the European Union, the Court of Justice of the European Union, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, and the European Data Protection Supervisor implemented internal rules protecting whistle-blowers, in accordance with Articles 22a, 22b and 22c of the Staff Regulations; urges all institutions to ensure their respective adopted internal rules on whistle-blower protection are robust and comprehensive;
32. Encourages the Member States to develop data, benchmarks and indicators on whistle-blower policies in both the public and private sector;
33. Recalls that Commission Implementing Directive (EU) 2015/2392 sets out the procedures for reporting, record-keeping requirements, and protection measures for whistle-blowers; underlines the importance of guaranteeing that whistle-blowers can report infringements in a confidential way and that their anonymity is properly and fully safeguarded, also in the digital environment, but regrets that this is one of the few pieces of sectorial legislation that includes provisions for whistle-blowers;
34. Encourages the Commission to study best practices from whistle-blower programmes already in place in other countries around the world; draws attention to the fact that some existing schemes provide financial rewards to whistle-blowers (such as a percentage of the sanctions ordered); considers that although this needs to be managed carefully to prevent potential abuse, such rewards could provide important income to persons who have lost their jobs as a result of whistle-blowing;
35. Calls on the Member States to refrain from criminalising the actions of whistle-blowers in

disclosing information about illegal activities or irregularities harmful to the EU's financial interests;

36. 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.

21.10.2016

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Budgetary Control

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

Rapporteur: Morten Messerschmidt

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Maintains that whistle-blowers play an essential role in helping Member State and EU institutions and bodies to prevent and tackle any breaches of the principle of integrity and misuse of power that threaten or violate public health and safety, financial integrity, the economy, human rights, the environment or the rule of law at European and national levels, or that raise unemployment, restrict or distort fair competition and undermine the trust of citizens in democratic institutions and processes; stresses that, in this regard, whistle-blowers contribute greatly to increasing the democratic quality of, and the trust in, public institutions by making them directly accountable to citizens and more transparent;
2. Notes that both the whistle-blowers and the public body or institution involved should be ensured the legal protection of rights guaranteed by the European Charter of Fundamental Rights and by national legal provisions;
3. Recalls that Article 22(c) of the Staff Regulations requires EU institutions to introduce internal whistle-blowing rules providing protection for whistle-blowers who report suspected abuses, and for their rights and interests, and to provide for protection and prevention policies, as well as for adequate remedies against possible retaliation by the institution for which they work;
4. Regrets that not all EU institutions and bodies have adopted the rules; calls, therefore, on them to adopt and apply such rules to protect whistle-blowers without delay;
5. Recalls that the Member States, as first consignees of EU funds, have an obligation to scrutinise the legality of how they are spent;

6. Considers it necessary to foster an ethical culture helping to ensure that whistle-blowers will not suffer retaliation or face internal conflicts;
7. Takes note that the Commission, in its EU Anti-Corruption report, stated that while the Member States have in place most of the necessary anti-corruption legal instruments and institutions, the results they deliver are not satisfactory across the EU; calls, therefore, on the Member States to make concrete efforts to ensure adequate capacity to these instruments and institutions, and to improve their efficiency; notes with concern that anti-corruption rules are not always vigorously enforced, that systemic problems are not tackled effectively enough, that relevant institutions do not always have sufficient capacity to enforce the rules, that declared intentions are still too distant from concrete results, and that genuine political will to eradicate corruption often appears to be missing; calls, therefore, on the Member States to enforce effective anti-corruption rules and, at the same time, to properly implement European and international standards and guidelines concerning whistle-blowers' protection in their national laws;
8. Calls on the Commission to take legislative action, with the aim of improving transparency, to provide full access to documents, and to combat corruption, including mafia-related activities; regards it as essential that legislative provisions designed to guarantee greater transparency and traceability of financial flows, in particular as far as EU funds are concerned, are strengthened, including by means of final audits to check that the funds have been used properly;
9. Regrets that many Member States have yet to put in place dedicated whistle-blower protection rules, notwithstanding the essential need of whistle-blower protection in the prevention of, and fight against, corruption, and despite the fact that whistle-blower protection is recommended in Article 33 of the UN Convention against Corruption;
10. Recalls that Commission Directive 2015/2392 sets out the procedures for reporting, record-keeping requirements, and protection measures for whistle-blowers; underlines the importance in guaranteeing that whistle-blowers can report infringements in a confidential way and that their anonymity is properly and fully safeguarded, also in the digital environment, but regrets that this is one of the few pieces of sectorial legislation that includes provisions for whistle-blowers;
11. Calls on the Commission to set up an EU legal framework on the protection of whistle-blowers in order to improve their protection in the Member States;
12. Encourages the Commission to study best practices from whistle-blower programmes already in place in other countries around the world; draws attention to the fact that some existing schemes provide financial rewards to whistle-blowers (such as a percentage of the sanctions ordered); considers that although this needs to be managed carefully to prevent potential abuse, such rewards could provide important income to persons who have lost their jobs as a result of whistle-blowing;
13. Calls on the Member States to refrain from criminalising the actions of whistle-blowers in disclosing information about illegal activities or irregularities harmful to the EU's financial interests;
14. Regrets the Commission's decision to withdraw a chapter on the EU institutions from its

report on corruption in the Member States, and calls, therefore, on the Commission to reintroduce a chapter on this important aspect;

15. Calls on all EU institutions to address the Ombudsman's own initiative report of 24 July 2014, in compliance with Article 22(c) of the new Staff Regulation, inviting all EU bodies to adopt ethical alert mechanisms and whistle-blowing legal frameworks directly based on the internal rules of the Ombudsman's office; reiterates its determination to do so;
16. Calls on the Commission and the Member States to develop and put in place specific policies and programmes to raise awareness of the social importance of whistle-blowers in ensuring respect for the principle of integrity, detecting violations of fundamental rights and the rule of law, and avoiding the misuse of power within our societies;
17. Calls for accessible, secure and direct channels to be set up that allow information about possible irregularities affecting the EU's financial interests to be shared while ensuring confidentiality where such information and whistle-blowers are concerned;
18. Believes that, in order to avoid any conflicts of interests that could undermine public perception as far as the integrity of the EU institutions is concerned, the Commission should swiftly revise its Code of Conduct for Commissioners by strengthening its transparency and aligning it with the Treaty rules.

RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

Date adopted	20.10.2016
Result of final vote	+: 17 -: 1 0: 0
Members present for the final vote	Mercedes Bresso, Pascal Durand, Danuta Maria Hübner, Diane James, Ramón Jáuregui Atondo, Jo Leinen, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Kazimierz Michał Ujazdowski
Substitutes present for the final vote	Isabella Adinolfi, Max Andersson, Gerolf Annemans, Charles Goerens, Sylvia-Yvonne Kaufmann, Jiří Pospíšil
Substitutes under Rule 200(2) present for the final vote	Godelieve Quisthoudt-Rowohl, Csaba Sógor

RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

Date adopted	9.1.2017
Result of final vote	+: 21 -: 0 0: 0
Members present for the final vote	Inés Ayala Sender, Ryszard Czarnecki, Dennis de Jong, Martina Dlabajová, Luke Ming Flanagan, Jens Geier, Ingeborg Gräßle, Verónica Lope Fontagné, Dan Nica, Georgi Pirinski, Petri Sarvamaa, Claudia Schmidt, Bart Staes, Tomáš Zdechovský
Substitutes present for the final vote	Brian Hayes, Cătălin Sorin Ivan, Benedek Jávor, Julia Pitera, Miroslav Poche, Patricija Šulin
Substitutes under Rule 200(2) present for the final vote	Clare Moody