



---

*Plenary sitting*

---

**A8-0398/2018**

26.11.2018

**\*\*\*I**

# **REPORT**

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))

Committee on Legal Affairs

Rapporteur: Virginie Rozière

Rapporteurs for the opinion (\*):

Miguel Viegas, Committee on Economic and Monetary Affairs

Maite Pagazaurtundúa Ruiz, Committee on Civil Liberties, Justice and Home Affairs

(\*) Associated committees – Rule 54 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	134
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS .....	137
(*) OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS ..	149
(*) OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS .....	188
OPINION OF THE COMMITTEE ON BUDGETARY CONTROL .....	256
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS.....	312
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY .....	350
OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION.....	434
OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS .....	489
PROCEDURE – COMMITTEE RESPONSIBLE .....	522
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	523



## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0218),
  - having regard to Article 294(2) and Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207 and 325(4) of the Treaty on the Functioning of the European Union and Article 31 of the Treaty establishing the European Atomic Energy Community, pursuant to which the Commission submitted the proposal to Parliament (C8-0159/2018),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the Court of Auditors of 26 September 2018<sup>1</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 18 October 2018<sup>2</sup>,
  - After consulting the Committee of the Regions,
  - having regard to Rules 59 and 39 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Budgetary Control, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Culture and Education, and the Committee on Constitutional Affairs (A8-0398/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces,

---

<sup>1</sup> OJ C 405, 9.11.2018, p. 1.

<sup>2</sup> Not yet published in the Official Journal.

substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive

#### Citation 1

##### *Text proposed by the Commission*

Having regard to Article 294(2) and Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207 and 325(4) of the Treaty on the Functioning of the European Union and Article 31 thereof,

##### *Amendment*

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, **153 (1), (a), (b), and (e), 157(3)**, 168, 169, 192, 207 and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

## Amendment 2

### Proposal for a directive

#### 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 **a public or private** 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 **that are harmful to the public interest** and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. **In this context, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged both at European and international level. The purpose of this**

*Directive is therefore to create a climate of trust that enables whistleblowers to report observed or suspected breaches of law and threats to the public interest and to enhance the exercise of freedom of expression and the freedom of the media enshrined in Article 11 of the Charter of Fundamental Rights of the European Union. It is important to highlight that those freedoms are the cornerstone of investigative journalism and the principle of the confidentiality of sources of information.*

### Amendment 3

#### 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 public disclosures*** by whistleblowers ***and investigative journalists*** are one upstream component of enforcement of Union law ***and policies***: they feed national and Union enforcement systems with information, ***often*** leading to effective detection, investigation and prosecution of breaches of Union law, ***thus enhancing transparency and accountability***.

### Amendment 4

#### Proposal for a directive Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

(2a) ***All major scandals in the public eye since 2014, such as ‘LuxLeaks’ and ‘the Panama Papers’, came to light thanks to the actions of whistleblowers.***

## 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) 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***. As whistleblowers are ***usually*** in a privileged position to disclose ***such*** breaches, ***and have the courage to report or disclose information in defence of the public interest, notwithstanding any personal and professional risk***, it is necessary to enhance enforcement ***of Union law*** by ensuring effective protection of whistleblowers from retaliation and introducing effective, ***independent, confidential and safe*** reporting channels.

## Amendment 6

### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. The consequences of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and the Union as a whole.

*Amendment*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and ***Union institutions, bodies, offices and agencies and is also*** uneven across policy areas. The consequences of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and the Union as a whole.



## Amendment 7

### Proposal for a directive

#### Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4 a) Article 33 of the United Nations Convention against Corruption, to which the Union and its Member States are parties, clearly stipulates the need for appropriate legal measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with that Convention.***

## Amendment 8

### Proposal for a directive

#### Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 9

### Proposal for a directive

#### Recital 5

*Text proposed by the Commission*

*Amendment*

(5) Accordingly, common minimum standards ensuring effective whistleblower protection should apply in *those* acts and policy areas where i) there is a need to

(5) Accordingly, common minimum ***legal*** standards ensuring effective whistleblower protection ***with a general and comprehensive approach*** should

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.

apply in ***all Union and national*** 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 ***or national*** law cause serious harm to the public interest.

## **Amendment 10**

### **Proposal for a directive Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Whistleblower protection should be enforced to foster an environment conducive to freedom of information and of the media; this requires firstly that journalists and their sources, including whistleblowers, be given effective protection against any violation of their safety and their mental and physical integrity, and that any attempt to intimidate them or to undermine their independence be prevented.***

## **Amendment 11**

### **Proposal for a directive Recital 6**

*Text proposed by the Commission*

*Amendment*

(6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of

(6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of

competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market.

competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market. ***In most of the cases, such breaches place the trust of citizens in public institutions under a serious threat, thus jeopardising the proper functioning of democracy. Every effort should be made to protect those reporting misuse or misconduct regarding the Union budget and Union institutions.***

## Amendment 12

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) A regime for the protection of persons reporting on breaches of Union law does not obviate the need to strengthen the means of supervision of each Member State and their public structures, which should be increasingly capable of fighting tax fraud and money laundering, nor the need to participate in international cooperation in those areas.***

## Amendment 13

### Proposal for a directive Recital 7

*Text proposed by the Commission*

*Amendment*

(7) In the area of financial services, the added value of whistleblower protection was already acknowledged by the Union legislator. In the aftermath of the financial crisis, which exposed serious shortcomings in the enforcement of the relevant rules, measures for the protection of

(7) In the area of financial services, the added value of ***sectoral*** whistleblower protection was already acknowledged by the Union legislator. In the aftermath of the financial crisis, which exposed serious shortcomings in the enforcement of the relevant rules, measures for the protection

whistleblowers were introduced in a significant number of legislative instruments in this area<sup>34</sup>. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU<sup>35</sup> provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

---

<sup>34</sup> Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector".

<sup>35</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

of whistleblowers were introduced in a significant number of legislative instruments in this area<sup>34</sup>. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU<sup>35</sup> provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

***However, a number of high profile cases involving European financial institutions have proven that protection of whistleblowers within such financial institutions still remains unsatisfactory and that fears of reprisals from both employers and authorities still prevent whistleblowers from coming forward with information on breaches of law.***

---

<sup>34</sup> Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector".

<sup>35</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

## Amendment 14

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>,

#### *Amendment*

(9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>,

which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely road and railway transport.

which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary, *inter alia*, to complement **and expand upon** the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance **immediately** the enforcement of safety standards for other transport modes, namely **special, inland waterway**, road and railway transport.

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

## Amendment 15

### 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 2018<sup>40</sup>. Whilst whistleblower protection

#### *Amendment*

(10) Evidence-gathering, **preventing**, detecting and addressing environmental crimes and unlawful conduct **or omissions as well as potential breaches concerning** the protection of the environment **unfortunately** remain a challenge and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and

rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, 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.

---

<sup>40</sup> COM(2018) 10 *final*.

<sup>41</sup> 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).

governance" of 18 January 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, the introduction of such protection *is* 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.

---

<sup>40</sup> COM(2018) 0010.

<sup>41</sup> Directive 2013/30/EU of the European Parliament and of the Council, of 12 June 2013, on safety of offshore oil and gas operations *and amending Directive 2004/35/EC* (OJ L 178, 28.6.2013, p. 66).

## Amendment 16

### Proposal for a directive

#### Recital 11

##### *Text proposed by the Commission*

(11) Similar considerations warrant the introduction of whistleblower protection to build upon existing provisions and prevent breaches of EU rules in the area of food chain and in particular on food and feed safety as well as on animal health and welfare. The different Union rules developed in these areas are closely interlinked. Regulation (EC) No 178/2002<sup>42</sup> sets out the general principles and requirements which underpin all Union and national measures relating to food and feed, with a particular focus on food safety, in order to ensure a high level of protection of human health and consumers' interests in relation to food as well as the effective functioning of the internal market. This Regulation provides, amongst others, that food and feed business operators are

##### *Amendment*

(11) Similar considerations warrant the introduction of whistleblower protection to build upon existing provisions and prevent breaches of EU rules in the area of food chain and in particular on food and feed safety as well as on animal health, *protection* and welfare. The different Union rules developed in these areas are closely interlinked. Regulation (EC) No 178/2002<sup>42</sup> sets out the general principles and requirements which underpin all Union and national measures relating to food and feed, with a particular focus on food safety, in order to ensure a high level of protection of human health and consumers' interests in relation to food as well as the effective functioning of the internal market. This Regulation provides, amongst others, that food and feed business operators are

prevented from discouraging their employees and others from cooperating with competent authorities where this may prevent, reduce or eliminate a risk arising from food. The Union legislator has taken a similar approach in the area of 'Animal Health Law' through Regulation (EU) 2016/429 establishing the rules for the prevention and control of animal diseases which are transmissible to animals or to humans <sup>43</sup>.

---

<sup>42</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>43</sup> OJ L 84, p. 1

prevented from discouraging their employees and others from cooperating with competent authorities where this may prevent, reduce or eliminate a risk arising from food. The Union legislator has taken a similar approach in the area of 'Animal Health Law' through Regulation (EU) 2016/429 establishing the rules for the prevention and control of animal diseases which are transmissible to animals or to humans <sup>43</sup>. ***Council Directive 98/58/EC<sup>43a</sup> and Directive 2010/63/EU of the European Parliament and of the Council<sup>43b</sup>, as well as Council Regulation (EC) No 1/2005 <sup>43c</sup> and Council Regulation (EC) No 1099/2009<sup>43d</sup> lay down rules on the protection and welfare of animals kept for farming purposes, during transport, at the time of killing, and when they are used for animal experimentation.***

---

<sup>42</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>43</sup> OJ L 84, p. 1

<sup>43a</sup> ***Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (OJ L 221, 8.8.1998, p. 23).***

<sup>43b</sup> ***Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes (OJ L 276, 20.10.2010, p. 33).***

<sup>43c</sup> ***Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3,***

5.1.2005, p. 1).

<sup>43d</sup> Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ L 303, 18.11.2009, p. 1).

## Amendment 17

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) Enhancing the protection of whistleblowers would also favour preventing and deterring breaches of Euratom rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive and would **be** reinforce the enforcement of existing provisions of the revised Nuclear Safety Directive<sup>44</sup> on the effective nuclear safety culture and, in particular, Article 8 b (2) (a), which requires, inter alia, that the competent regulatory authority establishes management systems which give due priority to nuclear safety and promote, at all levels of staff and management, the ability to question the effective delivery of relevant safety principles and practices and to report in a timely manner on safety issues.

---

<sup>44</sup> Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42–52).

#### *Amendment*

(12) Enhancing the protection of whistleblowers would also favour preventing and deterring breaches of Euratom rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive **waste** and would reinforce the enforcement of existing provisions of the revised Nuclear Safety Directive<sup>44</sup> on the effective nuclear safety culture and, in particular, Article 8 b (2) (a), which requires, inter alia, that the competent regulatory authority establishes management systems which give due priority to nuclear safety and promote, at all levels of staff and management, the ability to question the effective delivery of relevant safety principles and practices and to report in a timely manner on safety issues.

---

<sup>44</sup> Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42).

## Amendment 18

### Proposal for a directive Recital 13



(13) In the same vein, whistleblowers' reports can be key to detecting and preventing, reducing or eliminating risks to public health and to consumer protection resulting from breaches of Union rules which might otherwise remain hidden. In particular, consumer protection is also strongly linked to cases where unsafe products can cause **considerable** harm to consumers. Whistleblower protection should therefore be introduced in relation to relevant Union rules adopted pursuant to Articles 114, 168 and 169 TFEU.

(13) In the same vein, whistleblowers' reports can be key to detecting and preventing, reducing or eliminating risks to public health and to consumer protection resulting from breaches of Union rules which might otherwise remain hidden. In particular, consumer protection is also strongly linked to cases where unsafe products can cause harm to consumers. Whistleblower protection should therefore be introduced in relation to relevant Union rules adopted pursuant to Articles 114, 168 and 169 TFEU.

## **Amendment 19**

### **Proposal for a directive Recital 14**

(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 systems<sup>45</sup>, 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. 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.

(14) The protection of privacy and personal data, ***enshrined in Articles 7 and 8 of the Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights (ECHR)***, is another area where whistleblowers ***can help*** 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 systems<sup>45</sup>, 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. energy, ***tourism***, health, transport, banking, ***construction***, etc.) ***for*** providers of key digital services (e.g. cloud computing services) ***and for suppliers of basic utilities, such as water, electricity and gas***. Whistleblowers' reporting in this area is particularly valuable ***in order*** to prevent security incidents that would affect key economic and social activities and widely used digital services, ***as well as to prevent***

***any infringement of Union data protection legislation.*** It helps ensuring the continuity of services which are essential for society.

---

<sup>45</sup> 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.

---

<sup>45</sup> 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 (***OJ L 194, 19.7.2016, p. 1***).

## Amendment 20

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

#### *Amendment*

(16) The protection of the financial interests of the Union, which relates to the fight against fraud, corruption, ***breaches of legal requirements, 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 action. ***Investigative journalists also play a crucial role in revealing wrongdoing connected to all those areas. Such journalists represent a very exposed group of professionals, often paying with their jobs, freedom and even with their lives for***

*disclosure of massive irregularities and corruption schemes. Special measures to protect investigative journalists should, therefore, be included in a horizontal legislative proposal for the protection of whistleblowers. Investigative journalism and whistleblower protection are necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.*

## Amendment 21

### 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 abuse<sup>49</sup>, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation<sup>50</sup>, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of 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 to ascertain which legal entities in the area of financial services, the prevention of money laundering **and** terrorist financing are currently obliged to establish internal reporting channels.

#### *Amendment*

(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse<sup>49</sup>, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation<sup>50</sup>, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of 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 to ascertain which legal entities in the area of financial services, the prevention of **and the fight against** money laundering, **the proper implementation of Directive 2011/7/EU of the European Parliament and of the Council<sup>50a</sup>**, terrorist financing **and cyber-crime** are currently obliged to establish internal reporting channels. **As such cases often involve highly complex international corporate and financial arrangements, which are likely to be within the remit of differing jurisdictions, provisions for a unified point of contact for whistleblowers should be adopted.**

---

<sup>49</sup> OJ L 173, p. 1.

<sup>50</sup> 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).

---

<sup>49</sup> OJ L 173, p. 1.

<sup>50</sup> 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).

<sup>50a</sup> *Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).*

## Amendment 22

### Proposal for a directive Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

***(18a) The Union is founded on a set of common values and principles. It guarantees respect for human rights and fundamental freedoms, as enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'). Since those are the rights and principles on which the Union is founded, their protection is of paramount importance and persons uncovering violations of such rights and principles deserve to benefit from the protection provided for under this Directive.***

## Amendment 23

### Proposal for a directive Recital 19

*Text proposed by the Commission*

*Amendment*

(19) Each time a new Union act for which whistleblower protection is relevant

(19) ***In order to take account of any*** new Union act for which whistleblower

and *can contribute to* more effective enforcement *is adopted, consideration should be given to whether* to amend the Annex *to the present Directive* in order to place it under its scope.

protection is relevant and *which could have an impact in terms of* more effective enforcement, *the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to amend this Directive by updating the Annex thereto each time such a new Union act is adopted* in order to place it under *the scope of this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>1a</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*

---

<sup>1a</sup> OJ L 123, 12.5.2016, p. 1."

## Amendment 24

### Proposal for a directive Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

*(19a) In certain situations, infringements of Union law regarding workers' protection, employment and working conditions, social, individual and collective workers' rights can be the subject of effective individual procedures to secure redress. On the other hand, where such infringements are systematic, they undermine the public interest and there is therefore a need to provide for the*

*protection of those who report such infringements. In certain fields, difficulties with the implementation of Union legislation have been observed, such as having to resort unacceptably to precarious employment. Effective enforcement of Union law is also required and improving the protection of whistleblowers in the field of labour law would thus improve the application of the law and ensure a high level of protection of workers in the internal market while ensuring fair competition between economic operators.*

## Amendment 25

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

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

#### *Amendment*

(20) This Directive should ***complement*** the protection afforded to employees when reporting on breaches of Union employment law. In particular, in the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. Workers and their representatives are entitled to raise issues with the competent national ***or Union*** authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

## Amendment 26

### Proposal for a directive Recital 21

*Text proposed by the Commission*

(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. ***In particular,*** Moreover, the provision of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.

*Amendment*

(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. Moreover, the provision of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.

**Amendment 27**

**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 ***act on the strength of the*** right of freedom of expression ***and information,*** 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), ***which*** encompasses ***the right to receive and impart information, as well as*** media freedom and pluralism.

**Amendment 28**

**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

(26) Protection should, firstly, apply to persons having the status of 'workers',

*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 Union<sup>52</sup>, 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.

---

<sup>52</sup> *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.

within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union<sup>52</sup>, 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, namely in a manner such that public and civil servants are included.*** Protection should thus also be granted to workers in **other** employment relationships, including part-time workers and fixed-term contract workers, ***interns, paid and unpaid trainees***, as well as persons with a contract of employment or employment relationship with a temporary agency ***and those in precarious employment or with cross-border status***, which are types of relationships where standard protections against unfair treatment are often difficult to apply. ***Finally, protection should also be granted to persons whose employment contract has ended.***

---

<sup>52</sup> Judgment of *the Court of Justice* of 3 July 1986, *Lawrie-Blum v Land Baden-Württemberg*, C-66/85, *ECLI:EU:C:1986:284*; judgment of *the Court of Justice* of 14 October 2010, Union Syndicale Solidaires Isère, C-428/09, *ECLI:EU:C:2010:612*; judgment of *the Court of Justice* of 9 July 2015, Balkaya, C-229/14, *ECLI:EU:C:2015:455*; judgment of *the Court of Justice* of 4 December 2014, FNV Kunsten *Informatie en Media*, C-413/13, *ECLI:EU:C:2014:2411*; judgment of *the Court of Justice* of 17 November 2016, *Betriebsrat der Ruhrlandklinik*, C-216/15, *ECLI:EU:C:2016:883*.

## Amendment 29

### 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 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*

(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of ***national law or in accordance with*** 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, ***which may take the form, for instance,*** of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

*Justification*

*The directive should respect the definition of the concept of worker is a national matter for some Member states.*

## Amendment 30

### Proposal for a directive Recital 27 a (new)

*Text proposed by the Commission*

*Amendment*

**(27 a) In accordance with Articles 22a, 22b and 22c of the Staff Regulations of Officials of the European Union and Article 11 of the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1a</sup>, all Union institutions are required to adopt and implement internal rules protecting whistleblowers.**

---

<sup>1a</sup> OJ L 56, 4.3.1968, p. 1.

## Amendment 31

### Proposal for a directive Recital 28

*Text proposed by the Commission*

*Amendment*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation.

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches **or for directly or indirectly supporting reporting by whistleblowers**. Retaliation against volunteers and **paid or** unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation **or career prospects**.

## Amendment 32

### Proposal for a directive Recital 28 a (new)

*(28a) Similarly, it is important to ensure protection for persons, such as work colleagues who assist the whistleblower in the workplace, inter alia by providing advice on how to proceed, the proper channels for reporting, the protections available, or the wording to use in the report. Such persons could be made privy to the information uncovered and could therefore also be victims of retaliation. They should, as such, benefit from the protection provided for by this Directive. Investigative journalists also play a crucial role in exposing breaches of Union law and can suffer from retaliation measures, such as strategic litigation suits, for example regarding libel or defamation. They should therefore also be entitled to enjoy the protection measures provided for in this Directive, so as to safeguard freedom of expression to the extent that national law does not provide for greater protection.*

**Amendment 33**

**Proposal for a directive  
Recital 28 b (new)**

*Text proposed by the Commission*

*Amendment*

*(28b) Effective whistleblower protection should also include protecting any individual who has evidence of such acts in the public or private sector but who has not necessarily witnessed such acts first hand.*

**Amendment 34**

**Proposal for a directive  
Recital 28 c (new)**

**(28c) *Effective protection implies adequate training and an information centre available to inform whistleblowers about their rights, the disclosure options, and the limitations in the protection so they are aware of their rights and responsibilities. This should not be considered a substitute for access to independent legal advice which should also be available.***

## **Amendment 35**

### **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 36**

### **Proposal for a directive Recital 30**

*Text proposed by the Commission*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about ***potential*** breaches, which ***have not yet materialised, but*** are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive

*Amendment*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about breaches which are ***very*** likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise ***well-founded***,

evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of ***information which is already in the public domain or of*** unsubstantiated rumours and hearsay.

reasonable concerns or suspicions ***as well as to persons who add to information about issues already in the public domain.*** At the same time, protection should not apply to the reporting of unsubstantiated rumours and hearsay.

## Amendment 37

### Proposal for a directive Recital 30 a (new)

*Text proposed by the Commission*

*Amendment*

***(30a) However, in order to prevent unjustified reputational damages a clear distinction should also be made between deliberate false accusations, intended to harm the person or entity concerned, and the reporting of information for which the reporting person had reasonable grounds to believe that it was true. This Directive should be without prejudice to national laws applicable in the case of false accusations, such as defamation.***

## Amendment 38

### Proposal for a directive Recital 31

*Text proposed by the Commission*

*Amendment*

(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.

(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, ***or by persons considering reporting or by persons who assist the reporting person in the reporting process***, so that ***such persons*** can enjoy legal protection. ***Since forms of retaliation are limited only by the imagination of the perpetrators of such acts***, effective protection of reporting persons, ***or of persons considering reporting or of persons who assist the***

*reporting person in the reporting process*, 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 39

### 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 *as well as to investigative journalists* from retaliation *and any form of harassment* increases the legal certainty of (potential) whistleblowers and thereby encourages and facilitates whistleblowing also to the media *when it is justified*. In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies. *In this context also, investigative journalists who use whistleblower sources should themselves be given the same protection as their whistleblower sources. 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.*

## Amendment 40

### 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 **that are** competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive, **and that have the highest possible degree of independence and impartiality**. These may be **judicial authorities**, regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent **should be independent and** have the necessary capacities and powers to **impartially and objectively** 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 received proper training.**

**Amendment 41**

**Proposal for a directive  
Recital 35**

*Text proposed by the Commission*

(35) Union law in specific areas, such as market abuse<sup>53</sup>, civil aviation<sup>54</sup> or safety of offshore oil and gas operations<sup>55</sup> already provides for the establishment of internal and external reporting channels. The obligations to establish such channels laid down in this Directive should build as far as possible on the existing channels provided by specific Union acts.

*Amendment*

(35) Union law in specific areas, such as market abuse<sup>53</sup>, civil aviation<sup>54</sup> or safety of offshore oil and gas operations<sup>55</sup> already provides for the establishment of internal and external reporting channels. The obligations to establish such channels laid down in this Directive should build as far as possible on the existing channels provided by specific Union acts. **In the absence of such provisions and where the rules laid down in this Directive afford greater protection, the latter rules should**

---

<sup>53</sup> Cited above.

<sup>54</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, OJ L 122, p. 18.

<sup>55</sup> Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC.

## Amendment 42

### Proposal for a directive Recital 35 a (new)

*Text proposed by the Commission*

## Amendment 43

### Proposal for a directive Recital 35 b (new)

*Text proposed by the Commission*

*apply.*

---

<sup>53</sup> Cited above.

<sup>54</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, ***amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007*** (OJ L 122, 24.4.2014, p. 18).

<sup>55</sup> Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (***OJ L 178, 28.6.2013, p. 66***).

*Amendment*

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

*Amendment*

***(35b) Reporting persons in possession of information related to high-level corruption should have recourse to a***



*judicial body that is independent from other branches of government with the powers to grant reporting persons effective protection and to address the breaches that they expose.*

#### Amendment 44

##### Proposal for a directive Recital 37

###### *Text proposed by the Commission*

(37) For the effective detection and prevention of breaches of Union law it is vital that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

###### *Amendment*

(37) For the effective detection and prevention of breaches of Union law it is vital that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate ***and proportionate*** internal procedures ***that are governed by the principles of independence and impartiality*** for receiving, ***analysing*** and following-up on reports. ***Measures taken in accordance with such internal procedures should provide for adequate guarantees regarding confidentiality, data protection and privacy.***

#### Amendment 45

##### Proposal for a directive Recital 38

###### *Text proposed by the Commission*

(38) For legal entities in the private sector, the obligation to establish internal channels is commensurate with their size and the level of risk their activities pose to the public interest. It should apply to all medium-sized and large entities irrespective of the nature of their activities, based on their obligation to collect VAT. As a general rule small and micro

###### *Amendment*

(38) For legal entities in the private sector, the obligation to establish internal channels is commensurate with their size and the level of risk their activities pose to the public interest. It should apply to all medium-sized and large entities irrespective of the nature of their activities, based on their obligation to collect VAT. ***However, by way of derogation, Member***

undertakings, as defined in Article 2 of the Annex *of* the Commission Recommendation of 6 May 2003, as amended<sup>56</sup>, should be exempted from the obligation to establish internal channels. However, following an appropriate risk assessment, Member States may require small undertakings to establish internal reporting channels in specific cases (e.g. due to the significant risks that may result from their activities).

---

<sup>56</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

*States should be free to exempt medium-sized entities, as defined in Article 2 of the Annex to the Commission*

*Recommendation of 6 May 2003, as amended<sup>56</sup>, from that obligation.* As a general rule small and micro undertakings, as defined in Article 2 of the Annex *to* the Commission Recommendation of 6 May 2003, as amended, should be exempted from the obligation to establish internal channels. However, following an appropriate risk assessment, Member States may require small undertakings to establish internal reporting channels in specific cases (e.g. due to the significant risks that may result from their activities).

---

<sup>56</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

## **Amendment 46**

### **Proposal for a directive Recital 39**

#### *Text proposed by the Commission*

(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.

## **Amendment 47**

### **Proposal for a directive Recital 44 a (new)**

#### *Amendment*

(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in *or closely linked to* the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.

***(44a) While the intention of this Directive is not to regulate the arrangements for anonymous reporting or anonymous public disclosure, such kinds of reports may occur. Anonymous reports received through internal channels should therefore be diligently followed-up. As regards anonymous reports made using external channels, competent authorities should be allowed to disregard such reports in accordance with national law. Moreover, in cases where the identity of reporting persons happens to be revealed, such persons should be eligible for protection under this Directive.***

**Amendment 48**

**Proposal for a directive  
Recital 44 b (new)**

***(44b) It has been proven that keeping a reporting person's identity confidential is an essential element in avoiding backsliding and self-censorship. The duty of confidentiality should, therefore, only be waived in exceptional circumstances in which disclosure of information relating to the reporting person's personal data is a necessary and proportionate obligation required under Union or national law in the context of subsequent investigations or judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws. Appropriate sanctions should be provided for in the event of breaches of the duty of confidentiality concerning the reporting person's identity.***

## Amendment 49

### Proposal for a directive Recital 44 c (new)

*Text proposed by the Commission*

*Amendment*

***(44c) It is crucial that the confidentiality of the identity of the reporting person and anyone involved be ensured so that the reporting process runs as smoothly as possible and without any impediment, and so that self-censorship is avoided. Indeed, the importance of protecting personal data is laid down in Union law and in national law, and such data requires all the more protection in the event of reporting.***

## Amendment 50

### Proposal for a directive Recital 45

*Text proposed by the Commission*

*Amendment*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest and independence. In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest, ***proper know-how*** and independence. In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.

## Amendment 51

### Proposal for a directive Recital 46

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

(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further unnecessary reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow up to the report (for instance, closure based on lack of sufficient evidence or other grounds, launch of an internal enquiry and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total **four** months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect. ***In all cases, the reporting person should be informed of the investigation's progress and outcome. He or she should be given the opportunity to be consulted and to make comments, during the course of the investigation, albeit with no obligation to do so. Such comments should be taken into account where deemed relevant by the person or department in charge with the follow-up of the reports.***

## **Amendment 52**

### **Proposal for a directive Recital 47 a (new)**

***(47a) Recipients of disclosed information within the workplace should***

*include, inter alia: line-managers, superiors or representatives of the organisation; human resources officers, ethics officers, work councils or other bodies in charge of mediating conflicts at work including conflicts of interest; internal financial oversight bodies within the organisation; disciplinary bodies within the organisation.*

## **Amendment 53**

### **Proposal for a directive Recital 49**

#### *Text proposed by the Commission*

(49) Lack of confidence in the **usefulness** of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.

#### *Amendment*

(49) ***Along with the very real and very reasonable fear of retaliation,*** lack of confidence in the ***effectiveness*** of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.

## **Amendment 54**

### **Proposal for a directive Recital 50**

#### *Text proposed by the Commission*

(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address

#### *Amendment*

(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address

the problem that may be the subject of the report, as well as to avoid unnecessary public disclosures. Such timeframe should not exceed **three** months, but could be extended to **six** months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

## Amendment 55

### Proposal for a directive Recital 52

#### *Text proposed by the Commission*

(52) In order to allow for effective communication with their dedicated staff, it is necessary that the competent authorities have in place and use specific channels, separate from their normal public complaints systems, that should be user-friendly and allow for written and oral, as well as electronic and non-electronic reporting.

## Amendment 56

### Proposal for a directive Recital 53

#### *Text proposed by the Commission*

(53) Dedicated staff members of the competent authorities, who are professionally trained, including on applicable data protection rules, **would** be necessary in order to handle reports and to ensure communication with the reporting person, **as well as following** up on the report in a suitable manner.

the problem that may be the subject of the report, as well as to avoid unnecessary public disclosures. Such timeframe should not exceed **two** months, but could be extended to **four** months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

#### *Amendment*

(52) In order to allow for effective communication with their dedicated staff, it is necessary that the competent authorities have in place and use specific channels, separate from their normal public complaints systems, that should be user-friendly, **confidential** and allow for written and oral, as well as electronic and non-electronic reporting.

#### *Amendment*

(53) Dedicated staff members of the competent authorities, who are professionally trained **on a regular basis**, including on applicable data protection rules, **should** be necessary in order to **receive and** handle reports and to ensure communication with the reporting person, **to follow** up on the report in a suitable manner, **as well as to provide information and advice to any interested person**.

## Amendment 57

### Proposal for a directive Recital 54

#### *Text proposed by the Commission*

(54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.

#### *Amendment*

(54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels, ***in cases where external reporting is possible***, with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.

## Amendment 58

### 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, ***while protecting the identity and privacy of the reporting person wherever possible, and, where relevant, made available to other Member States' or Union authorities respecting, where possible, the confidentiality of the identity of the reporting person. It remains the responsibility of both the transmitting and receiving authorities to ensure full protection of the identity of the reporting person and to ensure, where possible, his***



*or her privacy.*

## **Amendment 59**

### **Proposal for a directive Recital 58**

#### *Text proposed by the Commission*

(58) Protection of personal data of the reporting and concerned person *is* crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the report that should include a secure system within the competent authority with restricted access rights for authorised staff only.

#### *Amendment*

(58) Protection of personal data of the reporting and concerned person, ***as well as confidentiality of information, are*** crucial in order to avoid unfair treatment, ***any harassment or intimidation,*** or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the report that should include a secure system within the competent authority with restricted access rights for authorised staff only.

## **Amendment 60**

### **Proposal for a directive Recital 60**

#### *Text proposed by the Commission*

(60) To enjoy protection, the reporting persons should reasonably believe, in light of the circumstances and the information available to them at the time of the reporting, that the matters reported by them are true. This reasonable belief should be presumed unless and until proven

#### *Amendment*

(60) ***Reporting persons should enjoy the protection of this Directive whether they turn to internal or external reporting channels or use both, and without special conditions or order of preference. Reporting persons who exercise their right to public disclosure should enjoy***

otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection. At the same time, it ensures that protection is not lost where the reporting person made an inaccurate report in honest error. In a similar vein, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope.

*protection under this Directive in the same way. Such protection should apply throughout the reporting procedure, including once the procedure has been concluded, unless it can be shown that there is no threat of retaliation.* To enjoy protection, the reporting persons should *be acting in good faith in the sense that they should* reasonably believe, in light of the circumstances and the information available to them at the time of the reporting, that the matters reported by them are true. This reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection *and can be held accountable under the national laws of the Member States.* At the same time, it ensures that protection is not lost where the reporting person made an inaccurate report in honest error. In a similar vein, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope.

## Amendment 61

### Proposal for a directive Recital 61

*Text proposed by the Commission*

(61) *The requirement of a tiered use of reporting channels, as a general rule, is necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing the reporting person to choose the most appropriate channel*

*Amendment*

(61) *It is necessary to ensure that all reporting channels, internal and external, are open to the reporting person and that the reporting person is free to choose the most appropriate channel depending on the individual circumstances of the case, so as to ensure that the information gets to the persons or entities who can contribute to the early and effective resolution of risks to the public interest. Moreover, it is necessary to protect public disclosures*

*depending on the individual circumstances of the case.* Moreover, it is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression, **and** media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights<sup>57</sup>.

---

<sup>57</sup> One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure (see, for instance, *Guja v. Moldova* [GC], no 14277/04, ECHR 2008);

taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression, media freedom **and the right to information**, whilst balancing the **legitimate** interest of employers to manage their organisations and to protect their **reputation and** interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights<sup>57</sup>.

---

<sup>57</sup> One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure (see, for instance, *Guja v. Moldova* [GC], no 14277/04, ECHR 2008);

## Amendment 62

### Proposal for a directive Recital 62

#### *Text proposed by the Commission*

(62) As a rule, reporting persons should first use the internal channels at their disposal and report to their employer. ***However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was***

#### *Amendment*

(62) As a rule, reporting persons should first use the internal ***or external*** channels at their disposal and report to their employer ***or to the competent authority. Moreover, protection is also to be granted in cases where Union law allows the reporting person to report directly to the bodies, offices or agencies of the Union, for example in the context of fraud concerning the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services.***

*taken to address the breach of law despite the positive results of the enquiry).*

## **Amendment 63**

### **Proposal for a directive**

#### **Recital 63**

*Text proposed by the Commission*

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

*deleted*

## Amendment 64

### Proposal for a directive Recital 64

*Text proposed by the Commission*

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

*Amendment*

(64) Persons making a public disclosure directly should also qualify for protection in cases where a breach remains unaddressed (for example, it was not properly assessed or investigated or no remedial action was taken) despite having been reported internally ***or*** externally ***or in both forms***; or in cases where reporting persons have ***reasonable grounds*** to believe that there is collusion between the perpetrator of the breach and the competent authority is reasonably suspected, ***or that relevant external authorities have directly or indirectly participated in the alleged misconduct***, that evidence ***could*** be concealed or destroyed, or that the effectiveness of investigative actions by competent authorities might be jeopardised; or in cases of imminent and manifest danger for ***or harm to*** the public interest, or where there is a risk of irreversible damage, including, inter alia, harm to physical integrity ***or where there is a situation of urgency***.

## Amendment 65

### Proposal for a directive Recital 64 a (new)

*Text proposed by the Commission*

*Amendment*

***(64a) Protecting whistleblowers helps prevent and remedy acts prejudicial to the public interest. While it is important to define a coherent and robust system for reporting infringements under this Directive, the system should fundamentally be based on the relevance and usefulness of the information reported to the organisation concerned,***

*the competent authorities or the public. It is therefore imperative to ensure that the protection provided for in this Directive is afforded to any persons reporting or making a public disclosure as defined in this Directive, and that no argument can be used to deny them such protection.*

## **Amendment 66**

### **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. Indirect retaliation also includes actions taken against **facilitators or** 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 67**

### **Proposal for a directive**

#### **Recital 66**

(66) Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear prohibition of retaliation in law has an important dissuasive effect, **further** strengthened by provisions for personal liability and penalties for the perpetrators of retaliation.

(66) Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear prohibition of retaliation in law has an important dissuasive effect, **and it should be** strengthened by provisions for personal liability and penalties for the perpetrators of retaliation, **and for those in management positions who facilitate or ignore such retaliation;**

## **Amendment 68**

### **Proposal for a directive Recital 67**

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a **user-friendly** way **and** is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a way **that** is **easily understandable and** easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice, **in particular through the competent authorities**, can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

## Amendment 69

### Proposal for a directive Recital 67 a (new)

*Text proposed by the Commission*

*Amendment*

***(67a) In Member States which provide extensive protection for reporting persons, there are a variety of mechanisms in place to accompany and support reporting persons. Based on the existing best practices and the varying circumstances in Member States, it should be possible that individual advice and accurate information be provided by an independent single and clearly identified authority or an information centre established by the Member State provided that sufficient guarantees are supplied. That advice or information should be provided to any person who so requests. The information or advice could concern matters such as the protection measures, the appropriateness of the reporting channels or the scope of the Directive.***

## Amendment 70

### Proposal for a directive Recital 69

*Text proposed by the Commission*

*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. At the same time, this Directive should not affect the protection of legal and other professional privilege as provided for under national law.

(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, ***such as medical secrecy and client-lawyer privilege***, as provided for under national law, ***or of the***



*confidentiality required to protect national security where provided for under national law.*

## **Amendment 71**

### **Proposal for a directive Recital 70**

#### *Text proposed by the Commission*

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

#### *Amendment*

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting ***or public disclosure*** and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

## **Amendment 72**

### **Proposal for a directive Recital 71**

#### *Text proposed by the Commission*

(71) Beyond an explicit prohibition of retaliation provided in law, it is crucial that reporting persons who do suffer retaliation have access to legal remedies. The appropriate remedy in each case will be determined by the kind of retaliation suffered. It may take the form of actions for reinstatement (for instance, in case of dismissal, transfer or demotion, or of withholding of training or promotion) or for ***restauration*** of a cancelled permit,

#### *Amendment*

(71) Beyond an explicit prohibition of retaliation provided in law, it is crucial that reporting persons who do suffer retaliation have access to legal remedies ***and compensation***. The appropriate remedy in each case will be determined by the kind of retaliation suffered, ***and damage suffered should be compensated in full***. It may take the form of actions for reinstatement (for instance, in case of dismissal, transfer or demotion, or of withholding of training or

licence or contract; compensation for actual and future financial losses (for lost past wages, but also for future loss of income, costs linked to a change of occupation); compensation for other economic damage such as legal expenses and costs of medical treatment, and for intangible damage (pain and suffering).

promotion) or for **restoration** of a cancelled permit, licence or contract; compensation for actual and future financial losses (for lost past wages, but also for future loss of income, costs linked to a change of occupation); compensation for other economic damage such as legal expenses and costs of medical **and psychological** treatment, and for intangible damage (pain and suffering).

## Amendment 73

### Proposal for a directive

#### Recital 72

*Text proposed by the Commission*

(72) The types of legal action may vary between legal systems but they should ensure ***as full and effective a remedy as possible. Remedies should not discourage potential future whistleblowers. For instance, allowing for compensation as an alternative to reinstatement in case of dismissal might give rise to a systematic practice in particular by larger organisations, thus having a dissuasive effect on future whistleblowers.***

*Amendment*

(72) The types of legal action may vary between legal systems but they should ensure full ***compensation for the damage suffered.***

## Amendment 74

### Proposal for a directive

#### Recital 73

*Text proposed by the Commission*

(73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Interim relief can be in particular necessary in order to stop threats, attempts or continuing acts of retaliation, such as harassment at the workplace, or to prevent forms of retaliation such as dismissal, which might be difficult to reverse after the lapse of

*Amendment*

(73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Interim relief can be in particular necessary in order to stop threats, attempts or continuing acts of retaliation, such as harassment ***outside and*** at the workplace, or to prevent forms of retaliation such as ***verbal abuse or physical violence, or*** dismissal, which might be

lengthy periods and which can ruin financially the individual — a perspective which can seriously discourage potential whistleblowers.

difficult to reverse after the lapse of lengthy periods and which can ruin financially the individual — a perspective which can seriously discourage potential whistleblowers.

## Amendment 75

### Proposal for a directive Recital 74

#### *Text proposed by the Commission*

(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council<sup>58</sup> exempts reporting persons from the civil redress measures, procedures and remedies it provides for, in case the alleged acquisition, use or disclosure of the trade secret was carried out for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest. Also in other proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence. In such cases, the person initiating the proceedings should carry the burden to prove any intent on the part of the reporting person to violate the law.

#### *Amendment*

(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council<sup>58</sup> exempts reporting persons from the civil redress measures, procedures and remedies it provides for, in case the alleged acquisition, use or disclosure of the trade secret was carried out for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest. ***This Directive should therefore be without prejudice to the provisions laid down in Directive (EU) 2016/943 of the European Parliament and of the Council and both acts should be considered as being complementary. Therefore, the protection, procedures and conditions provided for in this Directive should be applicable to cases covered by its material scope even if the reported information could be qualified as a trade secret. Directive (EU) 2016/943 should apply in other cases.*** Also in other proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence. In such cases, the person initiating the proceedings should carry the burden to prove any intent on the part of the

reporting person to violate the law.

---

<sup>58</sup> 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 disclosure (OJ L 157, 15.6.2016, p. 1).

---

<sup>58</sup> 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 disclosure (OJ L 157, 15.6.2016, p. 1).

## Amendment 76

### Proposal for a directive Recital 75

#### *Text proposed by the Commission*

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need ***might be key, in certain cases***, for the effective enforcement of their rights to protection.

---

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

#### *Amendment*

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need ***is key*** for the effective enforcement of their rights to protection. ***Whistleblowers should also be able to claim compensation for any harassment suffered or for the loss of their current or future livelihood, if the damage occurred in retaliation.***

---

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

## Amendment 77

### Proposal for a directive

#### Recital 76

##### *Text proposed by the Commission*

(76) The rights of the concerned person should be protected in order to avoid reputational damages or other negative consequences. Furthermore, the rights of defence and access to remedies of the concerned person should be fully respected at every stage of the procedure following the report, in accordance with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. Member States should ***ensure the right of defence of the*** concerned ***person***, including the right to access to the file, the right to be heard and the right to seek effective remedy against a decision concerning the concerned person under the applicable procedures set out in national law in the context of investigations or subsequent judicial proceedings.

##### *Amendment*

(76) The rights of the concerned person should be protected in order to avoid reputational damages or other negative consequences. Furthermore, the rights of defence and access to remedies of the concerned person should be fully respected at every stage of the procedure following the report, in accordance with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. Member States should ***protect the confidentiality of the identity of the person*** concerned ***and ensure the rights of defence***, including the right to access to the file, the right to be heard and the right to seek effective remedy against a decision concerning the concerned person under the applicable procedures set out in national law in the context of investigations or subsequent judicial proceedings. ***To that end suitable measures should be taken to make individuals and civil society more aware of such rights.***

## Amendment 78

### Proposal for a directive

#### Recital 77

##### *Text proposed by the Commission*

(77) Any person who suffers prejudice, whether directly or indirectly, as a consequence of the reporting or disclosure of inaccurate or misleading information should retain the protection and the remedies available to him or her under the rules of general law. Where such inaccurate or misleading report or disclosure was made deliberately and knowingly, the concerned persons should

##### *Amendment*

(77) Any person who suffers prejudice, whether directly or indirectly, as a consequence of the reporting or disclosure of inaccurate or misleading information should retain the protection and the remedies available to him or her under the rules of general law. Where such inaccurate or misleading report or disclosure was made deliberately and knowingly, ***whistleblowers should not be***

be entitled to compensation in accordance with national law.

*entitled to enjoy protection and* the concerned persons should be entitled to compensation in accordance with national law.

## Amendment 79

### Proposal for a directive

#### Recital 78

##### *Text proposed by the Commission*

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who make a report or disclosure demonstrated to be knowingly false are necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.

##### *Amendment*

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who make a report or disclosure demonstrated to be knowingly false are *also* necessary to deter further malicious reporting and preserve the credibility of the system. *Where Member States provide for penalties in cases such as defamation or dissemination of false information, those penalties could also be applicable to reports or disclosures that have been demonstrated to be knowingly false.* The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.

## Amendment 80

### Proposal for a directive

#### Recital 80

##### *Text proposed by the Commission*

(80) This Directive introduces minimum standards and Member States should have the power to introduce or maintain more favourable provisions to the reporting person, *provided that such provisions do not interfere with the measures for the*

##### *Amendment*

(80) This Directive introduces minimum standards and Member States should have the power *and be encouraged* to introduce or maintain more favourable provisions to the reporting person. *The transposition of this Directive shall under no circumstances provide grounds for*

*protection of concerned persons.*

*reducing the general level of protection already afforded to reporting persons under national law in the areas to which it applies.*

## **Amendment 81**

### **Proposal for a directive**

#### **Recital 82**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## **Amendment 82**

### **Proposal for a directive**

#### **Recital 84**

##### *Text proposed by the Commission*

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause ***serious*** harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and

##### *Amendment*

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and

align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

## Amendment 83

### Proposal for a directive Recital 85

#### *Text proposed by the Commission*

(85) This Directive respects fundamental rights and **observes** the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive must be implemented in accordance with those rights and principles. **In particular, this Directive seeks to ensure** full respect for freedom of expression and information, the right to protection of personal data, the freedom to conduct a business, the right to a high level of consumer protection, the right to an effective remedy and the rights of defence.

#### *Amendment*

(85) This Directive respects fundamental rights and the principles recognised in particular by the Charter of Fundamental Rights of the European Union, **in particular Article 11 thereof**. Accordingly, this Directive must be implemented in accordance with those rights and principles **by ensuring** full respect for, **inter alia**, freedom of expression and information, the right to protection of personal data, the freedom to conduct a business, the right to a high level of consumer protection, the right to **fair and just working conditions, the right to a high level of human health protection, the right to a high level of environmental protection, the right to good administration, the right to** an effective remedy and the rights of **the** defence. **Particular consideration should also be given to the European Convention on Human Rights, in particular Article 10 thereof.**

## Amendment 84

### Proposal for a directive Recital 85 a (new)

#### *Text proposed by the Commission*

#### *Amendment*



*(85a) This Directive should be without prejudice to Member States' freedom to introduce the same or similar rules for breaches of national law, thereby providing a coherent and comprehensive framework for the protection of persons reporting on breaches.*

## **Amendment 85**

### **Proposal for a directive Recital 85 b (new)**

*Text proposed by the Commission*

*Amendment*

*(85b) Particular regard should be had to the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests, and to the European Parliament resolution of 24 October 2017 on legitimate measures to protect whistleblowers acting in the public interest when disclosing the confidential information of companies and public bodies.*

## **Amendment 86**

### **Proposal for a directive Article -1 (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article -1*

#### *Purpose*

*The purpose of this Directive is to enhance the protection of persons reporting breaches of Union law and to enhance the enforcement of the latter in order to safeguard the public interest, by laying down common minimum standards for the protection of persons reporting on unlawful activities or abuses of law in the areas specified in Article 1.*

## Amendment 87

### Proposal for a directive

#### Article 1

*Text proposed by the Commission*

##### Article 1

###### Material scope

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:

(a) breaches ***falling within the scope of the Union acts set out in the Annex (Part I and Part II) as regards*** the following areas:

- (i) public procurement;
- (ii) financial services, prevention of money laundering and terrorist financing;<sup>1</sup>
- (iii) product safety;
- (iv) transport safety;
- (v) protection of the environment;
- (vi) nuclear safety;
- (vii) food and feed safety, animal health and welfare;
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems.

(b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation

*Amendment*

##### Article 1

###### Material scope

1. This Directive lays down common minimum standards for the protection of persons reporting on the following unlawful activities or abuse of law.

(a) breaches ***of Union acts, which include, inter alia, the acts set out in the Annex (Part I and Part II) and the acts implementing them, that relate to*** the following areas:

- (i) public procurement;
- (ii) financial services, tax evasion, tax fraud, tax avoidance, prevention of money laundering and terrorist financing;<sup>1</sup>
- (iii) product safety;
- (iv) product safety;
- (v) protection of the environment;
- (vi) nuclear safety;
- (vii) food and feed safety, animal health and welfare;
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems; ***and***

***(xa) employment, working conditions, workers' rights and the principle of equal opportunities and treatment between men and women at work.***

(b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation

(EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

(c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;

(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.

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.

---

<sup>1</sup> ECON and LIBE exclusive competence

(EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

(c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;

(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.

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.

---

<sup>1</sup> ECON and LIBE exclusive competence

## Amendment 88

### Proposal for a directive Article 2

*Text proposed by the Commission*

#### Article 2

##### Personal scope

1. This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context including, at least, the following:

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

*Amendment*

#### Article 2

##### Personal scope

1. This Directive shall apply to reporting persons **and facilitators, acting in good faith**, working in the private or public sector **and** who acquired information on breaches in a work-related context including, at least, the following:

(a) persons having the status of worker, **within the meaning of national law and**

- (b) persons having the status of self-employed, with the meaning of Article 49 TFEU;
- (c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well as volunteers and unpaid trainees;
- (d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.

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.

*national practice or within* the meaning of Article 45 TFEU, *including civil servants*;

- (b) persons having the status of self-employed, with the meaning of Article 49 TFEU;
- (c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well as volunteers and *paid or* unpaid trainees;
- (d) any persons working under the supervision and direction of contractors, subcontractors, *service providers* and suppliers.

2. This Directive shall also apply to reporting persons *acting in good faith* 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, *as well as to reporting persons whose work-based relationship has ceased*.

## Amendment 89

### Proposal for a directive Article 3

*Text proposed by the Commission*

#### Article 3

##### Definitions

For the purposes of this Directive, the following definitions shall apply:

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

*Amendment*

#### Article 3

##### Definitions

For the purposes of this Directive, the following definitions shall apply:

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

(4) 'information on breaches' means evidence about actual breaches as well as reasonable suspicions about potential breaches which have not yet materialised;

(5) 'report' means the provision of information relating to a breach which has occurred or is likely to occur in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work;

(6) 'internal reporting' means provision of information on breaches within a public or private legal entity;

(7) 'external reporting' means provision of information on breaches to the competent authorities;

(8) 'disclosure' means making information on breaches acquired within the work-related context available to the public domain;

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

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

(11) 'concerned person' means a natural or legal person who is referred to in the report or disclosure as a person to whom

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;

(4) 'information on breaches' means evidence about actual breaches as well as reasonable suspicions about potential breaches which have not yet materialised;

(5) 'report' means the provision of information relating to a breach which has occurred or is likely to occur in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work;

(6) 'internal reporting' means provision of information on breaches within a public or private legal entity;

(7) 'external reporting' means provision of information on breaches to the competent authorities;

(8) 'disclosure' means making information on breaches acquired within the work-related context available to the public domain;

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

***(9a) 'facilitator' means a natural person who assists or aids the reporting person in the reporting process in a work-related context;***

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

(11) 'concerned person' means a natural or legal person who is referred to in the report or disclosure as a person to whom

the breach is attributed or with which he or she is associated;

(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;

(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;

(14) ‘competent authority’ means any national authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

the breach is attributed or with which he or she is associated;

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

(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;

(14) ‘competent authority’ means any national authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports;

***(14a) ‘good faith’ means the reasonable belief of a reporting person, in light of the circumstances and the information available to that person at the time of the reporting, that the information reported by that person is true and that it falls within the scope of this Directive.***

## Amendment 90

### Proposal for a directive Article 4

#### *Text proposed by the Commission*

##### Article 4

Obligation to establish internal channels and procedures for reporting and follow-up of reports

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels

#### *Amendment*

##### Article 4

Obligation to establish internal channels and procedures for reporting and follow-up of reports

1. Member States shall ensure, ***in accordance with national practices***, that ***employers and other*** legal entities in the

and procedures for reporting and following up on reports, following *consultations* with social partners, *if appropriate*.

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

3. The legal entities in the private sector referred to in paragraph 1 are the following:

- (a) private legal entities with 50 or more employees;
- (b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10 million or more;
- (c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May

private and in the public sector establish internal channels and procedures for reporting and following up on reports, following *consultation and in agreement* with *the* social partners.

2. Such channels and procedures shall allow for reporting by employees of the entity. They *shall* allow for reporting by other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d). ***Those reporting channels shall be clearly defined by the entity and easily accessible both within and from outside the entity.***

3. The legal entities in the private sector referred to in paragraph 1 are the following:

- (a) private legal entities with 50 or more employees;
- (b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10 million or more;
- (c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.

***3a. By way of derogation from points (a) and (b) of paragraph 3, Member States may exclude from the legal entities in the private sector referred to in paragraph 1 the following private legal entities:***

- (a) private legal entities with fewer than 250 employees;***
- (b) private legal entities with an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.***

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk ***for, in particular, the environment and public health***, Member States may require small private legal

2003<sup>62</sup>, other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

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

- (a) state administration;
- (b) regional administration and departments;
- (c) municipalities with more than 10 000 inhabitants;
- (d) other entities governed by public law.

---

<sup>62</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

entities, as defined in Commission Recommendation of 6 May 2003<sup>62</sup>, other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

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

- (a) state administration;
- (b) regional administration and departments;
- (c) municipalities with more than 10 000 inhabitants;
- (d) other entities governed by public law.

---

<sup>62</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

### *Justification*

*Detailed provisions on internal reporting channels should remain a national competence for Member States that have strong provisions in their national legislation.*

## **Amendment 91**

### **Proposal for a directive Article 5**

#### *Text proposed by the Commission*

##### Article 5

Procedures for internal reporting and follow-up of reports

1. The procedures for reporting and

#### *Amendment*

##### Article 5

Procedures for internal reporting and follow-up of reports

1. The procedures for reporting and



following-up of reports referred to in Article 4 shall include the following:

(a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised staff members;

(b) the designation of a person or department competent for following up on the reports;

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

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

(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally

following-up of reports referred to in Article 4 may include the following:

(a) channels for receiving the reports which are designed, set up and operated in a *secure* manner that ensures the confidentiality of the identity of the reporting person *and of the facilitators as well as of the concerned person*, and prevents access to non-authorised staff members;

(aa) *a confidential acknowledgment of receipt of the report to the reporting person within no more than seven days of that receipt;*

(b) the designation of *an impartial* person or *independent* department competent for following up on the reports.

(c) diligent follow up to the report by the designated person or department *and, where necessary, appropriate and timely action.*

(ca) *diligent follow up as regards anonymous reporting;*

(d) a reasonable timeframe, not exceeding *two* months *from the acknowledgment of receipt of* the report, to provide feedback to the reporting person about the follow-up to the report. *That timeframe may be extended to four months, where necessary due to the specific circumstances of the case, in particular where the subject of the report is of a nature and complexity such that a lengthy investigation may be required;*

(da) *the possibility for the reporting person to be consulted and to present comments during the course of the investigation and the possibility for those comments to be taken into account where deemed relevant by the person or department referred to in point (b); and*

(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally

to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in ***all*** of the following ways:

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

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

Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.

to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in ***any*** of the following ways:

(a) written reports in electronic or paper format and/or oral report through telephone lines, ***or other voice messaging systems***, whether recorded, ***with the prior consent of the reporting person*** or unrecorded;

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

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports, ***provided that the confidentiality and impartiality safeguards referred to in points (a) and (b) of paragraph 1 are complied with***. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.

***3a. The procedures for reporting and following up of reports referred to in Article 4 shall ensure that the reporting person or any person considering reporting has the right to be accompanied by a workers’ representative at all stages of the procedure, including during physical meetings as provided for under this Article.***

## Amendment 92

### Proposal for a directive

## Article 6

### *Text proposed by the Commission*

#### Article 6

Obligation to establish external reporting channels and to follow up on reports

1. Member States shall designate the authorities competent to receive and handle reports.
2. Member States shall ensure that the competent authorities:
  - (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;
  - (b) give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding three months or six months in duly justified cases;**
  - (c) transmit the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.
3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.
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.

### *Amendment*

#### Article 6

Obligation to establish external reporting channels and to follow up on reports

1. Member States shall designate the authorities competent to receive and handle reports.
2. Member States shall ensure that the competent authorities:
  - (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;  
**deleted**
  - (c) transmit the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.
3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports **and are entitled to take adequate remedial action if necessary**. The competent authorities shall communicate to the reporting person the final outcome of the investigations.
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 a reasonable time, in a secure manner and with due regard to relevant data protection and confidentiality law and rules**. The

reporting person *shall be* informed,  
*without delay, of such a transmission.*

## Amendment 93

### Proposal for a directive

#### Article 7

*Text proposed by the Commission*

##### Article 7

###### Design of external reporting channels

1. Dedicated external reporting channels shall be considered independent and autonomous, if they meet all of the following criteria:

(a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its ordinary course of business;

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;

c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.

2. The dedicated reporting channels shall allow for reporting in at least all of the following ways:

(a) written report in electronic or paper format;

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

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

*Amendment*

##### Article 7

###### Design of external reporting channels

1. Dedicated external reporting channels shall be considered independent and autonomous, if they meet all of the following criteria:

(a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its ordinary course of business;

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

c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.

2. The dedicated reporting channels shall allow for reporting in at least all of the following ways:

(a) written report in electronic or paper format;

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

c) physical meeting with dedicated staff members of the competent authority ***accompanied, if the reporting person***

3. Competent authorities shall ensure that a report received by means other than dedicated reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated staff members of the competent authority by using dedicated communication channels.

4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

*requests it, by a workers' representative.*

3. Competent authorities shall ensure that a report received by means other than dedicated reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated staff members of the competent authority by using dedicated communication channels.

4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

## Amendment 94

### Proposal for a directive Article 8

*Text proposed by the Commission*

#### Article 8

##### Dedicated staff members

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.

2. Dedicated staff members shall exercise the following functions:

- (a) providing any interested person with information on the procedures for reporting;
- (b) receiving and following-up reports;
- (c) maintaining contact with the

*Amendment*

#### Article 8

##### Dedicated staff members

1. Member States shall ensure that competent authorities have ***an adequate number of competent*** staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports, ***and shall comply with the confidentiality requirements provided for under this Directive.***

2. Dedicated staff members shall exercise the following functions:

- (a) providing any interested person with information on the procedures for reporting;
- (b) receiving and following-up reports. ***They shall determine whether the report falls under the scope of this Directive.***
- (c) maintaining contact with the

reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation.

reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation.

## Amendment 95

### Proposal for a directive Article 9

#### *Text proposed by the Commission*

##### Article 9

Procedures applicable to external reporting

1. The procedures applicable to external reporting shall provide for the following:

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

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

(c) the confidentiality regime applicable to reports, including a detailed

#### *Amendment*

##### Article 9

Procedures applicable to external reporting

1. The procedures applicable to external reporting shall provide for the following:

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

**(aa) a confidential acknowledgment of receipt of the report to the reporting person within no more than seven days of that receipt;**

(b) a reasonable timeframe, not exceeding **two months from the acknowledgment of receipt of the report, for diligently following-up on the report, including where necessary taking appropriate action as well as conducting investigations into the subject of the report, and for** giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back. **That timeframe may be extended to four months in duly justified cases;**

**(ba) follow-up as regards anonymous reporting in accordance with any provisions provided for in that regard under national law.**

(c) the confidentiality regime applicable to reports, including a detailed

description of the circumstances under which the confidential data of a reporting person may be disclosed.

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.

description of the circumstances under which the confidential data of a reporting person **and of a concerned person** may be disclosed.

***(ca) the possibility for the reporting person to be consulted and to present comments during the course of the investigation and the possibility for those comments to be taken into account where deemed relevant by the competent authority.***

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.

## **Amendment 96**

### **Proposal for a directive Article 10**

*Text proposed by the Commission*

#### **Article 10**

Information regarding the receipt of reports and their follow-up

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

(a) the conditions under which

*Amendment*

#### **Article 10**

Information regarding the receipt of reports and their follow-up

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

(a) the conditions under which

reporting persons qualify for protection under this Directive;

(b) the communication channels for receiving and following-up the reporting:

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

(ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;

(c) the procedures applicable to the reporting of breaches referred to in Article 9;

(d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with **Article 13** of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EC) 45/2001, as applicable.

(e) the nature of the follow-up to be given to reports;

(f) the remedies and procedures available against retaliation and possibilities to receive confidential advice for persons contemplating making a report;

(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.

reporting persons qualify for protection under this Directive;

(b) the communication channels for receiving and following-up the reporting:

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

(ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;

(c) the procedures applicable to the reporting of breaches referred to in Article 9;

(d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with **Articles 5 and 13** of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EC) 45/2001, as applicable.

(e) the nature of the follow-up to be given to reports;

(f) the remedies and procedures available against retaliation and possibilities to receive confidential advice for persons contemplating making a report;

(g) a statement clearly explaining that persons making information available to the competent **authorities** 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.

***(ga) an annual report on the alerts received and their treatment, while respecting the confidentiality of on-going investigations;***

***(gb) contact information of the single independent administrative authority as***



*provided for in Article 14a.*

## Amendment 97

### Proposal for a directive Article 11

*Text proposed by the Commission*

#### Article 11

##### Record-keeping of reports received

1. Member States shall ensure that competent authorities keep records of every report received.
2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority reasonably *believes* that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.
3. Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent *authority* shall *have the right to* document the oral reporting in one of the following ways:
  - (a) a recording of the conversation in a durable and retrievable form;

*Amendment*

#### Article 11

##### Record-keeping of reports received

1. Member States shall ensure that competent authorities keep records of every report received, *in compliance with the confidentiality requirements provided for in this Directive. The reports shall be stored for no longer than is necessary and proportionate in view of the reporting procedure and shall be deleted as soon as the reporting procedure has been completed. The personal data contained in those reports shall be processed in accordance with Union data protection law.*
2. Competent authorities *and the private and public legal entities* shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority *reasonably believed* that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.
3. Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, *and provided that the confidentiality requirements under this Directive are complied with*, the competent *authorities and the private and public legal entities* shall document the oral reporting in one of the following ways:
  - (a) a recording of the conversation in a durable and retrievable form;

(b) a complete and accurate transcript of the conversation prepared by the dedicated staff members of the competent authority.

The competent *authority* shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

4. Where an unrecorded telephone line is used for reporting, the competent *authority* shall *have the right to* document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

5. Where a person requests a meeting with the dedicated staff members of the competent *authority* for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent *authority* shall *have the right to* document the records of the meeting in one of the following ways:

- (a) a recording of the conversation in a durable and retrievable form;
- (b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority.

The competent *authority* shall offer the possibility to the reporting person to check, rectify and agree with the *minutes* of the meeting by signing *them*.

(b) a complete and accurate transcript of the conversation prepared by the dedicated staff members of the competent authority.

The competent *authorities and the public and private legal entities* shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

4. Where an unrecorded telephone line is used for reporting, the competent *authorities and the private and public legal entities* shall document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent *authorities and the public and private legal entities* shall offer the possibility to the reporting person to check, rectify and agree with *the transcript* of the call by signing them.

5. Where a person requests a meeting with the dedicated staff members of the competent *authorities or the private and public legal entities* for reporting according to Article 7(2)(c), competent authorities *and the private and public legal entities* shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. Competent *authorities and private and public legal entities* shall document the records of the meeting in one of the following ways:

- (a) a recording of the conversation in a durable and retrievable form;
- (b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority *and the private and public legal entities*.

The competent *authorities and the public and private legal entities* shall offer the possibility to the reporting person to check, rectify and agree with the *transcript* of the meeting by signing *it*.

**5a. Where the question of a disclosure referred to in point (c) of Article 9(1) arises, the competent authorities shall inform the reporting person thereof and shall send him or her a written justification explaining the reasons for the disclosure of the confidential data concerned. The reporting person shall be offered the possibility to check and rectify the justification and agree that the reasons for disclosure are a hand.**

## **Amendment 98**

### **Proposal for a directive Article 13**

#### *Text proposed by the Commission*

##### **Article 13**

#### **Conditions for the protection of reporting persons**

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.

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

(a) **he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;**

(b) **internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;**

#### *Amendment*

##### **Article 13**

#### **Conditions for the protection of reporting persons**

1. **A person reporting internally or externally or both** 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.

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

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

(e) *he or she had reasonable grounds to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;*

(f) *he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.*

3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported ***externally*** in accordance with the conditions set out in paragraph 2.

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

(a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or

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

3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported in accordance with the conditions set out in paragraph 1.

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

(a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 1 of this Article, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 5(1)(d), and 9(1)(b); or

(b) ***he or she has reasonable grounds to believe that*** he or she could not be expected to use internal and/or external reporting channels due, ***for instance,*** to imminent or manifest danger for ***or harm to*** the public interest, or to the particular circumstances of the case, ***such as cases where reporting persons have reasonable grounds to believe that there is collusion between the perpetrator of the breach and***

*the competent authority, or that there is direct or indirect participation in the alleged misconduct on the part of the relevant external authorities, or that evidence may be concealed or destroyed, or where there is a situation of urgency or a risk of irreversible damage.*

*4a. 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 on the same conditions as reporting persons whose identity was public knowledge when the report or public disclosure was first made.*

## Amendment 99

### Proposal for a directive Article 14

#### *Text proposed by the Commission*

##### Article 14

#### Prohibition of retaliation against reporting persons

Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, against reporting persons meeting the conditions set out in Article 13, including in particular in the form of:

- (a) suspension, lay-off, dismissal or equivalent measures;
- (b) demotion or withholding of promotion;
- (c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- (d) withholding of training;
- (e) negative performance assessment or employment reference;
- (f) imposition or administering of any

#### *Amendment*

##### Article 14

#### Prohibition of retaliation against reporting persons

Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, ***taken*** against reporting persons meeting the conditions set out in Article 13, ***against persons who intend to report or against facilitators***, including, in particular, in the form of:

- (a) suspension, lay-off, dismissal or equivalent measures;
- (b) demotion or withholding of promotion;
- (c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- (d) withholding of training;
- (e) negative performance assessment or employment reference;
- (f) imposition or administering of any

discipline, reprimand or other penalty, including a financial penalty;

(g) coercion, intimidation, harassment or ostracism ***at the workplace***;

(h) discrimination, disadvantage or unfair treatment;

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

(j) failure to renew or early termination of the temporary employment contract;

(k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;

(l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;

(m) early termination or cancellation of contract for goods or services;

(n) cancellation of a licence or permit.

discipline, reprimand or other penalty, including a financial penalty;

(g) coercion, intimidation, harassment or ostracism;

(h) discrimination, disadvantage or unfair treatment;

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

(j) failure to renew or early termination of the temporary employment contract;

(k) damage, including to the person's reputation, ***particularly in social media***, or financial loss, including loss of business and loss of income;

(l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;

(m) early termination or cancellation of a contract for goods or services ***due to the reporting under this Directive***;

(n) cancellation of a licence or permit;

***(na) mandatory psychiatric or medical referrals;***

***(nb) suspension or revocation of security clearance.***

## **Amendment 100**

### **Proposal for a directive Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 14a***

#### ***Support for the reporting person from an independent third party***

***1. Member States shall provide for the reporting person or the person intending to report or to make a public disclosure to be given support in the***

*procedure. Such support shall ensure that the identity of the persons referred to in this paragraph remains confidential and may, in particular, take the form of:*

*(a) free, impartial and confidential advice, especially on the scope of this Directive, the reporting channels and the protection granted to the reporting person and the rights of the concerned person;*

*(b) legal advice in the event of a legal dispute, in accordance with Article 15(8);*

*(c) psychological support, in accordance with Article 15(8).*

*2. This support may be provided by an information centre, or a single and clearly identified independent administrative authority.*

## **Amendment 101**

### **Proposal for a directive Article 14 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 14 b**

*Duty of maintaining the confidentiality of the identity of reporting persons*

*1. The identity of a reporting person may not be disclosed without the reporting person's explicit consent. This confidentiality requirement shall also apply to information that may be used to discover the identity of the reporting person.*

*2. Any person who comes into the possession of data referred to in paragraph 1 of this Article shall be required to protect such data.*

*3. Under no circumstances shall the person concerned be entitled to obtain information about the identity of the reporting person.*

*4. Circumstances under which the*

*confidential data of a reporting person may be disclosed shall be limited to cases where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the rights of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.*

*5. In the cases referred to in paragraph 3, the person designated to receive and follow-upon reports shall be required to notify the reporting person before disclosing his or her confidential data.*

*6. The internal and external reporting channels shall be designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person, and prevents access to non-authorised staff members.*

## Amendment 102

### Proposal for a directive Article 15

*Text proposed by the Commission*

#### Article 15

Measures for the protection of reporting persons against retaliation

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.
2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.

*Amendment*

#### Article 15

Measures for the protection of reporting persons **and facilitators** against retaliation

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.
2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.



3. Reporting persons shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

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.

5. In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report but was exclusively based on duly justified grounds.

6. Reporting persons shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the national framework.

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.

3. Reporting persons *and facilitators* shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

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.

5. In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report *or public disclosure*, but was exclusively based on duly justified grounds.

6. Reporting persons *and facilitators* shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the national framework.

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal. *Member States shall also take the necessary measures to extend such right to seek dismissal to*

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 Council<sup>63</sup>, 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.

---

<sup>63</sup> 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).

## **Amendment 103**

### **Proposal for a directive Article 15 a (new)**

*Text proposed by the Commission*

***individual members of civil society  
organisations when they are related to an  
act of reporting.***

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 Council<sup>63</sup>, and in accordance with national law, Member States may provide for further measures of legal and financial assistance and support, ***including psychological support***, for reporting persons in the framework of legal proceedings.

---

<sup>63</sup> 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).

*Amendment*

### ***Article 15 a***

#### ***Remedial measures***

***Member States shall take the necessary measures to ensure remedies and full compensation for damages suffered by reporting persons meeting the conditions set out in Article 13. Such remedial measures may take the following forms:***

- a) reintegration***
- b) restoration of a cancelled permit, licence or contract;***
- c) compensation for actual or future financial losses;***
- d) compensation for other economic***

*damages or non-material damages.*

#### **Amendment 104**

##### **Proposal for a directive Article 16 – paragraph 2**

*Text proposed by the Commission*

2. ***Where the identity of the concerned persons is not known to the public***, competent authorities shall ensure that their identity is protected for as long as the investigation is ongoing.

*Amendment*

2. Competent authorities shall ensure that ***the identity of the concerned persons*** is protected for as long as the investigation is ongoing, ***but in no case after the start of the criminal trial.***

#### **Amendment 105**

##### **Proposal for a directive Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 16 a**

##### ***Rights of Persons involved***

***Member States shall ensure that any findings or reports resulting from an assessment or an investigation of, or prompted by, reports or public disclosures under this Directive do not unfairly prejudice any individual, whether directly or indirectly. The right to a fair hearing or trial shall also be fully respected.***

#### **Amendment 106**

##### **Proposal for a directive Article 17**

*Text proposed by the Commission*

*Amendment*

##### **Article 17**

##### **Article 17**

##### **Penalties**

##### **Penalties**

1. Member States shall provide for effective, proportionate and dissuasive

1. Member States shall provide for effective, proportionate and dissuasive

penalties applicable to natural or legal persons that:

- (a) hinder or attempt to hinder reporting;
- (b) take retaliatory measures against reporting persons;
- (c) bring vexatious proceedings against reporting persons;
- (d) breach the duty of maintaining the confidentiality of the identity of reporting persons.

2. Member States shall ***provide for*** effective, proportionate and dissuasive penalties applicable to persons making ***malicious or abusive*** reports or disclosures, ***including*** measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures.

penalties applicable to natural or legal persons that:

- (a) hinder or attempt to hinder reporting;
- b) take retaliatory measures against reporting persons ***and facilitators***;
- (c) bring vexatious proceedings against reporting persons;
- d) breach the duty of maintaining the confidentiality of the identity of reporting persons ***and of concerned persons***.

2. Member States shall ***ensure that*** effective, proportionate and dissuasive penalties ***are*** applicable to ***reporting*** persons making reports or disclosures ***demonstrated to be knowingly false, and that*** measures ***are in place*** for compensating persons who have suffered damage from such false reports or disclosures

## Amendment 107

### Proposal for a directive Article 17 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 17 a***

#### ***No Waiver of Rights and Remedies***

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

## Amendment 108

### Proposal for a directive Article 17 b (new)

PE623.965v02-00

84/523

RR\1170275EN.docx

**Article 17b**

***Obligation to cooperate***

***1. Member State authorities that are made aware of breaches of Union law, as covered by this Directive, shall expeditiously inform all other relevant Member State authorities and/or Union bodies, offices and agencies, and shall cooperate with these in a loyal, effective and expeditious manner.***

***2. Member States authorities that are notified by other Member States' authorities of potential breaches of Union law covered by this directive shall provide a substantive response to actions taken in connection with said notification as well as an official acknowledgment of receipt and a point of contact for further cooperation.***

***3. Member States' authorities shall safeguard confidential information received, in particular the information related to the identity and other personal information of reporting persons.***

***4. Member States' authorities shall provide confidential access to the information received from reporting persons and facilitate requests for further information in a timely manner.***

***5. Member States' authorities shall share all relevant information with other competent Member States authorities pertaining to breaches of Union or national law in international cases and shall do so in a timely manner.***

**Amendment 109  
Proposal for a directive  
Article 18 – paragraph 1**

*Text proposed by the Commission*

Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be made in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall be immediately deleted.

*Amendment*

Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be made in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall ***not be collected or, if accidentally collected, shall*** be immediately deleted.

**Amendment 110**

**Proposal for a directive  
Article 19**

*Text proposed by the Commission*

Article 19

More favourable treatment

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

*Amendment*

Article 19

More favourable treatment ***and non-regression clause***

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

***1a.*** ***Transposition of this Directive shall not provide grounds for reducing the general level of protection already afforded to reporting persons under national law in the areas to which it applies.***

**Amendment 111**

**Proposal for a directive  
Article 19 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 19 a**

***Respect for social partners' autonomy***

***This Directive shall be without prejudice to the autonomy of the social partners and their right to enter into collective agreements in accordance with national law, traditions and practices while respecting the provisions of the Treaty.***

*Justification*

*Important to respect national labour marked models as regards to the autonomy of the social partners is respected.*

**Amendment 112**

**Proposal for a directive**

**Article 20 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. When transposing this Directive Member States may consider establishing an independent whistleblower protection authority.**

**Amendment 113**

**Proposal for a directive**

**Article 21 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide the Commission with all relevant information regarding the implementation and application of this Directive. On the basis of the information provided, the Commission shall, by 15 May 2023, submit a report to the European Parliament and the Council on the implementation and application of this Directive.

1. Member States shall provide the Commission with all relevant information regarding the implementation and application of this Directive. On the basis of the information provided, the Commission shall, by 15 May 2023, submit a report to the European Parliament and the Council on the implementation and application of this Directive. ***The report shall also include an initial assessment of whether it would be advisable to extend***

*the scope of this Directive to cover further areas or Union acts.*

#### **Amendment 114**

##### **Proposal for a directive**

##### **Article 21 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) the number of retaliatory measures against reporting persons ascertained.*

#### **Amendment 115**

##### **Proposal for a directive**

##### **Article 21 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The Commission shall, by 15 May **2027**, taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has operated and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further areas or Union acts.

3. The Commission shall, by 15 May **2025**, taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has operated, *the possible impact on fundamental rights such as privacy, the right to the presumption of innocence and the right to a fair trial*, and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further areas or Union acts.

#### **Amendment 116**

##### **Proposal for a directive**

##### **Article 21 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*



**3a. Such reports shall be made public and easily accessible.**

## **Amendment 117**

### **Proposal for a directive**

#### **Article 21 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 21 a**

##### **Updating the Annex**

***The Commission is empowered to adopt delegated acts in accordance with Article 21b in order to update the Annex to this Directive whenever a new Union legal act falls under the material scope laid down in point (a) of Article 1 (1) or Article 1 (2).***

## **Amendment 118**

### **Proposal for a directive**

#### **Article 21 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 21b**

##### **Exercise of the delegation**

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The power to adopt delegated acts referred to in Article 21a shall be conferred on the Commission for a period of five years from ... [OJ: please insert the date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each***

*period.*

*3. The delegation of power referred to in Article 21a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

*4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*

*5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*6. A delegated act adopted pursuant to Article 21a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.*

## **Amendment 119**

### **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

*Amendment*

B Article 1(a)(ii) – financial services,  
***tax evasion, tax fraud, tax avoidance,***

terrorist financing;

prevention of money laundering and  
terrorist financing;<sup>1a</sup>:

---

<sup>1a</sup> *ECON and LIBE exclusive competence*

## **Amendment 120**

### **Proposal for a directive Annex I – part I – point B a (new)**

*Text proposed by the Commission*

*Amendment*

***Ba. Article 1(a)(ii)(b) – social  
standards, health and safety at work***

***1. Social standards of the European  
Union, as regulated in particular by:***

***(i) Council Directive 79/7/EEC of 19  
December 1978 on the progressive  
implementation of the principle of equal  
treatment for men and women in matters  
of social security (OJ L 6, 10.1.1979,  
p. 24);***

***(ii) Council Directive 91/533/EEC of  
14 October 1991 on an employer's  
obligation to inform employees of the  
conditions applicable to the contract or  
employment relationship (OJ L 288,  
18.10.1991, p. 32);***

***(iii) Council Directive 91/383/EEC of  
25 June 1991 supplementing the  
measures to encourage improvements in  
the safety and health at work of workers  
with a fixed-duration employment  
relationship or a temporary employment  
relationship (OJ L 206, 29.7.1991, p. 19);***

***(iv) Council Directive 94/33/EC of 22  
June 1994 on the protection of young  
people at work (OJ L 216, 20.8.1994,  
p. 12);***

***(v) Council Directive 98/59/EC on the  
approximation of the laws of the Member  
States relating to collective redundancies  
(OJ L 225, 12.8.1998, p. 16);***

(vi) *Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ L 209, 25.7.1998, p. 46);*

(vii) *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16);*

(viii) *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22);*

(ix) *Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (OJ L 302, 1.12.2000, p. 57);*

(x) *Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16);*

(xi) *Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35-39) and Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and*

*repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1);*

*(xii) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10);*

*(xiii) Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37);*

*(xiv) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9);*

*(xv) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23);*

*(xvi) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36);*

*(xvii) Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1);*

*(xviii) Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128,*

30.4.2014, p. 8);

(xix) *Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')* (OJ L 159, 28.5.2014, p. 11);

(xx) *Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights* (OJ L 128, 30.4.2014, p. 1);

(xxi) *Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003 concerning the labour cost index* (OJ L 69, 13.3.2003, p. 1);

(xxii) *Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC* (OJ L 300, 14.11.2009, p. 51);

(xxiii) *Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems* (OJ L 284, 30.10.2009, p. 1);

(xxiv) *Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union* (OJ L 141, 27.5.2011, p. 1.);

*(xxv) Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived (OJ L 72, 12.3.2014, p. 1);*

*(xxvi) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19);*

**2. Workplace health and safety standards, as regulated in particular by:**

*(i) all individual Directives within the meaning of Article 16(1) of Directive 89/391/EEC;*

*(ii) Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels (OJ L 113, 30.4.1992, p. 19);*

*(iii) Directive 2001/95/EC of 3 December 2001 on general product safety (OJ L 11, 15.01.2002, p. 4);*

*(iv) Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24);*

*(v) Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC (OJ L 38, 9.2.2006, p. 36);*

*(vi) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13);*

*(vii) Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive*

*within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 260, 3.10.2009, p. 5);*

*(viii) Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (OJ L 330, 16.12.2009, p. 28);*

*(ix) Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).*

## **Amendment 121**

### **Proposal for a directive Annex I – part I – point E – title**

*Text proposed by the Commission*

E Article 1(a)(v) – protection of the environment:

*Amendment*

E Article 1(a)(v) – protection of the environment, *sustainable development, waste management, marine, air and noise pollution, protection and management of water and soils, protection of nature and biodiversity and fight against climate change*:

## **Amendment 122**

### **Proposal for a directive Annex I – part I – point E – paragraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

**1. Provisions on environmental responsibility, including:**

*(NB: this heading should be inserted before Annex I, part I, point E, point i)*



## **Amendment 123**

### **Proposal for a directive**

#### **Annex I – part I – point E – point iii**

*Text proposed by the Commission*

*Amendment*

(iii) *Regulation of (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23);* **deleted**

## **Amendment 124**

### **Proposal for a directive**

#### **Annex I – part I – point E – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) *Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52);* **deleted**

## **Amendment 125**

### **Proposal for a directive**

#### **Annex I – part I – point E – point v**

*Text proposed by the Commission*

*Amendment*

(v) *Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55);* **deleted**

## **Amendment 126**

### **Proposal for a directive**

#### **Annex I – part I – point E – point vi**

*Text proposed by the Commission*

*Amendment*

(vi) *Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1);* *deleted*

## **Amendment 127**

### **Proposal for a directive**

#### **Annex I – part I – point E – point vii**

*Text proposed by the Commission*

*Amendment*

(xvii) *Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60);* *deleted*

## **Amendment 128**

### **Proposal for a directive**

#### **Annex I – part I – point E – point viii**

*Text proposed by the Commission*

*Amendment*

(viii) *Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC* *deleted*

*(OJ L 396, 30.12.2006, p. 1);*

## **Amendment 129**

### **Proposal for a directive**

#### **Annex I – part I – point E – point ix**

*Text proposed by the Commission*

*Amendment*

*(ix) Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1).*

*deleted*

## **Amendment 130**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. Provisions on access to environmental information:**

**(i) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26);**

**(ii) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43);**

**(iii) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community**

*institutions and bodies (OJ L 264, 25.9.2006, p. 13);*

*(iv) Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).*

*(v) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice (OJ L 156, 25.6.2003, p. 17).*

*(NB. This paragraph should be placed after point E, (ii))*

## **Amendment 131**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Provisions on the environment and the climate, including:***

*(i) Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (OJ L 347, 20.12.2013, p. 185);*

*(ii) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16);*

*(iii) Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive*

*2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63), and all related Regulations;*

*(iv) Regulation (EU) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions (OJ L 129, 30.4.2014, p. 1);*

*(v) Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114);*

*(vi) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13);*

*(vii) Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195);*

*(viii) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283 of 31.10.2003 p. 51);*

(ix) *Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).*

## **Amendment 132**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

**1c. Provisions on sustainable development and waste management, including:**

(i) *Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3);*

(ii) *Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1);*

(iii) *Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1);*

(iv) *European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10);*

(v) *Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags (OJ L 115, 6.5.2015, p. 11);*

(vi) *Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38);*

(vii) *Directive 2006/66/EC of the European Parliament and of the Council*

*of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1);*

*(viii) Directive 2011/65/EU of the European Parliament and the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88);*

*(ix) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34);*

*(x) Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC (OJ L 310, 25.11.2005, p. 10);*

*(xi) Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ L 243, 24.9.1996, p. 31);*

*(xii) Directive 2011/65/EU of the European Parliament and the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88);*

*(xiii) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30);*

*(xiv) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1);*

*(xv) Regulation (EU) No 1257/2013 of the European Parliament and of the*

*Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1);*

*(xvi) Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60);*

*(xvii) Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States (OJ L 148, 19.6.1993, p. 1).*

## **Amendment 133**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 d (new)**

*Text proposed by the Commission*

*Amendment*

*Id. Provisions on marine, air and noise pollution, including:*

*(i) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1);*

*(ii) Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3);*

*(iii) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7);*

*(iv) Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1);*



(v) *Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22);*

(vi) *European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations (OJ L 365, 31.12.1994, p. 24);*

(vii) *Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (OJ L 285, 31.10.2009, p. 36);*

(viii) *Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1);*

(ix) *Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1);*

(x) *Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1);*

(xi) *Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission*

*performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1);*

*(xii) Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO<sub>2</sub> emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16);*

*(xiii) Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1);*

*(xiv) Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (OJ L 161, 14.6.2006, p. 12);*

*(xv) Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 12);*

*(xvi) Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (OJ L 252, 16.9.2016, p. 53);*

*(xvii) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17);*

*(xviii) Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1);*

*(xix) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (OJ L 8, 13.1.2009, p. 3);*

*(xx) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1);*

*(xxi) Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 157, 9.6.2006, p. 8);*

*(xxii) Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 53);*

*(xxiii) Regulation (EU) No 546/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ L 163, 29.5.2014, p. 15);*

*(xxiv) Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards*

*the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ L 140, 5.6.2009, p. 88);*

*(xxv) Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52);*

*(xxvi) Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55);*

*(xxvii) Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships (OJ EU L 115, 9.5.2003, p. 1);*

*(xxviii) Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ L 189, 18.7.2002, p. 12);*

*(xxix) Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors (OJ L 162, 3.7.2000, p. 1);*

*(xxx) Directive 2002/49/EC of the European Parliament and the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ L 189, 18.7.2002, p. 12).*

## **Amendment 134**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 e (new)**

***1e. Provisions on the protection and management of water and soils, including:***

***(i) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1);***

***(ii) Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84);***

***(iii) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19);***

***(iv) Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment (OJ L 135, 30.5.1991, p. 40);***

***(v) Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32);***

***(vi) Commission Directive 2003/40/EC of 16 May 2003 establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters (OJ L 126, 22.5.2003, p. 34);***

*(vii) Commission Regulation (EU) No 115/2010 of 9 February 2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters (OJ L 37, 10.2.2010, p. 13);*

*(viii) Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 on the management of bathing water quality and repealing Directive 76/160/EEC (OJ L 64, 4.3.2006, p. 37);*

*(ix) Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19);*

*(x) Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (OJ L 104, 8.4.2004, p. 1);*

*(xi) Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1);*

*(xii) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19);*

*(xiii) Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27);*

*(xiv) Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124,*

## Amendment 135

### Proposal for a directive

#### Annex I – part I – point E – paragraph 1 f (new)

*Text proposed by the Commission*

*Amendment*

***If. Provisions relating to the protection of nature and biodiversity:***

***(i) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7);***

***(ii) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7);***

***(iii) Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35);***

***(iv) Council Regulation (EC) No 1936/2001 of 27 September 2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish (OJ L 263, 3.10.2001, p. 1);***

***(v) Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture (OJ L 168, 28.6.2007, p. 1);***

***(vi) Council Directive 83/129/EC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom (OJ L 91, 9.4.1983, p. 30);***

***(vii) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ L 286, 31.10.2009, p. 36);***

- (viii) *Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (OJ L 201, 30.7.2008, p. 8);*
- (ix) *Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning bycatches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (OJ L 150, 30.4.2004, p. 12);*
- (x) *Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1);*
- (xi) *Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006, p. 1);*
- (xii) *Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006 (OJ L 242, 7.9.2012, p.13);*
- (xiii) *Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur (OJ L 343, 27.12.2007, p. 1);*
- (xiv) *Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ L 94, 9.4.1999,*



*p. 24);*

*(xv) Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23);*

*(xvi) Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347, 30.12.2005, p. 1);*

*(xvii) Commission Regulation (EU) No 1307/2014 of 8 December 2014 on defining the criteria and geographic ranges of highly biodiverse grassland for the purposes of Article 7b(3)(c) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (OJ L 351, 9.12.2014, p. 3).*

## **Amendment 136**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 g (new)**

*Text proposed by the Commission*

*Amendment*

***1g. Provisions on chemicals, including:***

***(i) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94***

*as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).*

#### **Amendment 137**

##### **Proposal for a directive**

##### **Annex I – part I – point E – paragraph 1 h (new)**

*Text proposed by the Commission*

*Amendment*

***1h. Provisions relating to organic products, including:***

***(i) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).***

#### **Amendment 138**

##### **Proposal for a directive**

##### **Annex I – part I – point F – paragraph 1 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

***(ia) Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42);***

#### **Amendment 139**

##### **Proposal for a directive**

##### **Annex I – part I – point G – title**

*Text proposed by the Commission*

*Amendment*

**G Article 1(a)(vii) – food and feed safety, *animal health and animal welfare*:**

**G Article 1(a)(vii) – food and feed safety:**

## **Amendment 140**

### **Proposal for a directive**

#### **Annex I – part I – point G – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Other legislative acts relevant to food and feed safety, in particular:**

**(i) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1);**

**(ii) Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms (OJ L 125, 21.5.2009, p. 75);**

**(iii) Regulation (EC) 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (OJ L 268, 18.10.2003, p. 24);**

**(iv) Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms (OJ L 287, 5.11.2003, p. 1);**

**(v) Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1);**

**(vi) Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJ L 304, 21.11.2003, p. 1);**

**(vii) Regulation (EC) No 1069/2009 of the European Parliament and of the**

*Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption (OJ L 300, 14.11.2009, p. 1);*

*(viii) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 91/414/EEC and 79/117/EEC (OJ L 309, 24.11.2009, p. 1);*

*(ix) Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71);*

*(x) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels (MRLs) of pesticides in or on food and feed of plant and animal origin (OJ L 70, 16.3.2005, p. 1);*

*(xi) Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);*

*(xii) Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);*

*(xiii) Council Regulation (Euratom)*

*2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);*

*(xiv) Council Decision 2002/628/EC of 25 June 2002 concerning the conclusion, on behalf of the European Community, on the Cartagena Protocol on Biosafety (OJ L 201, 31.7.2002, p. 48);*

*(xv) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1);*

*(xvi) Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ L 152, 16.6.2009, p. 11);*

*(xvii) Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ L 125, 23.5.1996, p. 10);*

*(xviii) Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stock-farming of certain active substances having a hormonal or thyrostatic action and of beta-agonists*

*and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ L 125, 23.5.1996, p. 3);*

*(xix) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55);*

*(xx) Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004, p. 206);*

*(xxi) Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11);*

*(xxii) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1);*

*(xxiii) Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of Salmonella and other specified food-borne zoonotic agents (OJ L 325, 12.12.2003, p. 1);*

*(xxiv) Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC (OJ L 325, 12.12.2003, p. 31);*

*(xxv) Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, enzymes and flavourings*

*(OJ L 354, 31.12.2008, p. 1);*

*(xxvi) Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 (OJ L 354, 31.12.2008, p. 7);*

*(xxvii) Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16);*

*(xxviii) Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34);*

*(xxix) Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (OJ L 309, 26.11.2003, p. 1);*

*(xxx) Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (OJ L 141, 6.6.2009, p. 3);*

*(xxxi) Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (OJ L 37, 13.2.1993, p. 1);*

*(xxxii) Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5);*

*(xxxiii) Directive 1999/2/EC of the*

*European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ L 66, 13.3.1999, p. 16);*

*(xxxiv) Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4);*

*(xxxv) Council Directive 82/711/EEC of 18 October 1982 laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs (OJ L 297, 23.10.1982, p. 26);*

*(xxxvi) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18);*

*(xxxvii) Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC)*



*No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35);*

*(xxxiii) Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1);*

*(xxxix) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development(EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487);*

*(xxxx) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No637/2008 and Council Regulation (EC) No 73/2009 (OJ L 354, 28.12.2013, p. 22);*

*(xxxxi) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671);*

*(xxxxii) Regulation(EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (OJ L 268, 18.10.2003, p. 29);*

*(xxxxiii) Council Directive 90/167/EEC of26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (OJ L 92, 7.4.1990, p. 42);*

*(xxxxiv) Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1);*

*(xxxxv) Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (OJ L 140, 30.5.2002, p. 10);*

*(xxxxvi) Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (OJ L 229, 1.9.2009, p. 1);*

*(xxxxii) Commission Directive 2008/38/EC of 5 March 2008 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes (OJ L 62, 6.3.2008, p. 9);*

*(xxxiii) Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 17 September 2003 laying down requirements for feed hygiene (OJ L 268, 8.10.2003, p. 1).*

## **Amendment 141**

### **Proposal for a directive**

#### **Annex I – part I – paragraph 4 – introductory part**

*Text proposed by the Commission*

**4. Protection of animal welfare as regulated by:**

*Amendment*

**Ga. Article 1(a)(vii)(a) Protection of animals and health and well-being of animals.**

**Provisions and standards on the protection, health and well-being of**

*animals, as regulated in particular by:*

## **Amendment 142**

### **Proposal for a directive**

#### **Annex I – part I – point G a – points iv - xxv (new)**

*Text proposed by the Commission*

*Amendment*

*(iv) Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes (OJ L 276, 20.10.2010, p. 33).*

*(v) Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ L 224, 18.8.1990, p. 29);*

*(vi) Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ L 268, 24.9.1991, p. 56);*

*(vii) Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ L 395, 30.12.1989, p. 13);*

*(viii) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59);*

*(ix) Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of pure bred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No*

**652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') (OJ L 171, 29.6.2016, p. 66);**

**(x) Council Directive 2008/73/EC of 15 July 2008 simplifying procedures of listing and publishing information in the veterinary and zootechnical fields and amending Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/426/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 91/496/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, Decision 2000/258/EC and Directives 2001/89/EC, 2002/60/EC and 2005/94/EC (OJ L 219, 14.8.2008, p. 40);**

**(xi) Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC (OJ L 174, 2.7.1997, p. 1);**

**(xii) Council Directive 96/93/EC of 17 December 1996 on the certification of animals and animal products (OJ L 13, 16.1.1997, p. 28);**

**(xiii) Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8);**

**(xiv) Commission Decision 2006/968/EC of 15 December 2006 implementing Council Regulation (EC) No 21/2004 as regards guidelines and procedures for the electronic identification of ovine and caprine animals (OJ L 401, 30.12.2006, p. 41);**

**(xv) Council Decision 1999/879/EC of 17 December 1999 concerning the placing on the market and administration of**

*bovine somatotrophin (BST) and repealing Decision 90/218/EEC (OJ L 331, 23.12.1999, p. 71);*

*(xvi) Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens (OJ L 203, 3.8.1999, p. 53);*

*(xvii) Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ L 182, 12.7.2007, p. 19);*

*(xiii) Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10, 15.1.2009, p. 7);*

*(xix) Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ L 47, 18.2.2009, p. 5);*

*(xx) Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of legholdtraps or trapping methods which do not meet international humane trapping standards (OJ L 308, 9.11.1991, p. 1);*

*(xxi) Directive 2013/31/EU of the European Parliament and of the Council of 12 June 2013 amending Council Directive 92/65/EEC as regards the animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets (OJ L 178, 28.6.2013, p. 107);*

*(xxii) Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (OJ L 178, 28.6.2013, p. 1);*

(xxiii) *Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae (OJ L 192, 23.7.2010, p. 1);*

(xxiv) *Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ L 157, 10.6.1992, p. 19).*

#### **Amendment 143**

##### **Proposal for a directive**

##### **Annex I – part I – point H – title**

*Text proposed by the Commission*

H Article 1(a)(viii) – public health:

*Amendment*

H Article 1(a)(viii) – public health  
*and health security:*

#### **Amendment 144**

##### **Proposal for a directive**

##### **Annex I – part I – point H – point 1 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

*ia. Commission Directive (EU) 2016/1214 of 25 July 2016 amending Directive 2005/62/EC as regards quality system standards and specifications for blood establishments (OJ L 199, 26.7.2016, p. 14);*

#### **Amendment 145**

##### **Proposal for a directive**

##### **Annex I – part I – point H – point 1 – point i b (new)**

*Text proposed by the Commission*

*Amendment*

*ib. Commission Directive 2005/61/EC of 30 September 2005 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards*

*traceability requirements and notification of serious adverse reactions and events (OJ L 256, 1.10.2005, p. 32);*

#### **Amendment 146**

##### **Proposal for a directive**

**Annex I – part I – point H – point 1 – point i c (new)**

*Text proposed by the Commission*

*Amendment*

*ic. Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components (OJ L 91, 30.3.2004, p. 25);*

#### **Amendment 147**

##### **Proposal for a directive**

**Annex I – part I – point H – point 1 – point i d (new)**

*Text proposed by the Commission*

*Amendment*

*id. Commission Directive 2005/62/EC of 30 September 2005 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards Community standards and specifications relating to a quality system for blood establishments (OJ L 256, 1.10.2005, p. 41);*

#### **Amendment 148**

##### **Proposal for a directive**

**Annex I – part I – point H – point 1 – point iii a (new)**

*Text proposed by the Commission*

*Amendment*

*iiia. Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for*

*transplantation (OJ L 207, 6.8.2010, p. 14).*

## **Amendment 149**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 5**

##### *Text proposed by the Commission*

5. Manufacture, presentation and sale of tobacco and related products regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

##### *Amendment*

5. Manufacture, presentation and sale of tobacco and related products regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1), ***and the advertising and sponsorship of tobacco products as regulated by Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ L 152, 20.6.2003, p. 16).***

## **Amendment 150**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 5 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***5a. Averting alcohol-related harm and the priorities set by the European strategy to support Member States in reducing alcohol-related harm.***



## **Amendment 151**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**5b. Other legislative acts relating to public health, in particular:**

**(i) Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176);**

**(ii) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59).**

## **Amendment 152**

### **Proposal for a directive**

#### **Annex I – part I – point J a (new)**

*Text proposed by the Commission*

*Amendment*

**Ja. Article 1 (a) (xa) - employment, working conditions, workers' rights and the principle of equal opportunities and treatment between men and women at work.**

**1. Employment legislation of the European Union, as regulated in particular by:**

**(i) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L288, 18.10.1991, p. 32);**

**(ii) Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers**

*with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206, 29.7.1991, p.19);*

*(iii) Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20.8.1994, p. 12);*

*(iv) Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16);*

*(v) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16);*

*(vi) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16);*

*(vii) Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80, 23.3.2002, p. 29–34)*

*(viii) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9);*

*(ix) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23);*

*(x) Directive 2008/94/EC of the*

*European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36);*

*(xi) Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9–14 );*

*(xii) Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28–44);*

*(xiii) Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L180, 15.7.2010, p. 1);*

*(xiv) Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11);*

*(xv) Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003 concerning the labour cost index (OJ L 69, 13.3.2003, p. 1);*

*(xvi) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency*

*proceedings (OJ L 141, 5.6.2015, p. 19);*

**2. Working conditions, as regulated in particular by:**

**(i) all individual Directives within the meaning of Article 16(1) of Directive 89/391/EEC;**

**(ii) Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 260, 3.10.2009, p. 5);**

**(iii) Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (OJ L 330, 16.12.2009, p. 28);**

**(iv) Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).**

## **Amendment 153**

### **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, **tax evasion, tax fraud, tax avoidance**, prevention of money laundering and terrorist financing:

## **Amendment 154**

### **Proposal for a directive**

#### **Annex I – part II – subpart C a (new)**

***C a protection of the Union's financial interests:***

***(i) Regulation (EU, EURATOM) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union.***

## **EXPLANATORY STATEMENT**

### **Protection for whistleblowers: an essential tool in defending the public interest**

The debate in Europe on how best to protect whistleblowers has moved forward significantly in recent decades. In the light of numerous studies and feedback on experiences, it is now commonly accepted that whistleblowers play a positive role in preventing and remedying acts prejudicial to the public interest. However, the potential benefits of whistleblowing are a long way from being fully exploited since many witnesses of acts prejudicial to the public interest in a professional context do not systematically report them. The reasons for this reticence are multiple and range from lack of knowledge of the reporting options available to fear of reprisals if they speak out. This has damaging consequences for society as a whole, as a wide variety of such attacks on the public interest, whether they concern the environment, the fight against tax evasion or corruption, or public health, continue to occur, thus undermining the public's right to information.

The Member States have often only amended legislation protecting whistleblowers in the wake of major scandals or disasters. Nevertheless, the recommendations adopted by the Council of Europe in 2014 were a significant step forward in establishing a set of standards that we urge Member States to transpose into their national law.

This proposal draws on these standards as well as European Court of Human Rights case law on freedom of expression. The rapporteur warmly welcomes the Commission's decision to incorporate its proposal for a directive into the framework of these recommendations, while paying due account to the resolution adopted by the European Parliament on 24 October 2017.

### **Scope: ensuring the effectiveness of the proposed instrument**

The rapporteur agrees that a broad and cross-cutting scope is the correct choice since the instrument will therefore cover a great many sectors ranging from protecting the Union's financial interests to nuclear safety, environmental protection, public health and the fight against tax evasion. A person shall be considered as a whistleblower if he or she reports or discloses an infringement of a Union act pertaining to one of these sectors, as set out in the Annex to the proposal. However, the risk remains that acts not constituting an infringement within the meaning of the Directive may fall outside its scope. The rapporteur therefore proposes that any wrongdoing pertaining to these sectors should be covered by the Directive. The rapporteur believes that this would be a more effective way of ensuring the public interest is protected, which is at the very heart of this proposal.

Since the European Union is founded on a set of common values and principles that guarantee respect for human rights and fundamental freedoms, the rapporteur considers it necessary to bring these fundamental rights under the scope of the proposal.

Officials and other servants of the European Union may, in the course of their professional activities, be privy to information which could give rise to whistleblowing as defined by this proposal for a Directive and could fall victim to retaliation. It is therefore important that they are granted the same protection as other workers. It is also important to ensure protection for those who assist the reporting person in the process, including investigative journalists.

## **Reporting channels: acting in the whistleblower's interest**

The rapporteur believes that the reporting channels set out in the proposal for a directive present sufficient safeguards as to robustness and independence. They could, however, be improved by providing for a notification of receipt of a report. The processing deadlines proposed by the Commission also appear to be too long, which could be a hindrance to the reporting procedure, and the rapporteur therefore proposes that they be shortened. The rapporteur also believes that trade union representatives should be actively involved in the design of internal channels and the provision of advice and support to those requesting them. Indeed, workers' representatives are directly present in the field and best placed to lend to support to potential whistleblowers in the process and to inform them about the internal reporting channels as well as their rights and obligations. It is therefore important for the Directive to afford them this role.

It would also appear essential to ensure that the identity of the reporting person remains confidential. Indeed, people who notice irregularities often end up backsliding and self-censorship mechanisms can kick in as a result of fear that their identity will be revealed. Respect for confidentiality has been shown to increase the number of whistleblower alerts received. The proposal's provisions in this area should therefore be strengthened in this regard to this question by providing for strong confidentiality requirements which may only be waived in exceptional and circumscribed circumstances.

## **Ensuring effectiveness of whistleblowing and the right to information**

The proposal is underpinned by a relatively strict sequencing concerning the use of reporting channels, with a certain amount of derogations. As a rule, a potential whistleblower should therefore first contact his or employer, wait up to three months for the report to be processed, then, in the event of an unsatisfactory response, contact an external authority and before possibly waiting up to another six months. Not only can this seriously compromise the report itself, but above all it also risks forcing whistleblowers into situations of immediate difficulty with their employers. What is more, this approach places the burden of proof on the whistleblowers to show they have chosen the most appropriate channel in the event that the sequencing provided for in the text is not followed. In the context of a balance of power that is anything but equal, this could well put the reporting person at risk. Lastly, this approach does not pay enough attention to the public's right to information in the event of a breach of the public interest. For these reasons, the rapporteur suggests rethinking the multiple tiers of channels by introducing more flexibility in order to leave it up to the reporting person to choose the most appropriate channel to use.

While it is entirely positive that the proposal grants protection to persons who have reasonable grounds to believe that the information reported was true at the time of reporting, the rapporteur believes that further clarification is required on this provision in order to exclude any possibility of reports being refused on grounds related to the whistleblower's intentions. The proposal's main focus should be on the relevance of the information disclosed in respect of the public interest, above and beyond the reasons for making the report.

## **Ensuring effective and comprehensive protection for whistleblowers**

The proposal for a directive prohibits retaliation, and lists the forms that this may take. This list can in no way be considered exhaustive, since the imagination of the perpetrator is the

only factor limiting the form and extent of any retaliation. It should therefore be made clear that these are only examples.

Some of the forms of protection granted are particularly useful. The reversal of the burden of proof is one such measure and the wording adopted by the proposal for a Directive has been made stronger so to enable the full potential of that provision to be brought to bear.

Anonymous reports have been submitted and will continue to be submitted. The rapporteur therefore wishes to include a provision in the text allowing a person whose identity is revealed although he or she wishes to remain anonymous to be covered by the Directive.

There are a variety of mechanisms to accompany and support whistleblowers in the Member States. These enable, for example, confidential advice on whistleblowing mechanisms to be provided by public authorities, trade unions or civil society organisations. The rapporteur considers such systems to be essential to assist whistleblowers in the process and therefore suggests that the directive could provide for them to be put in place in the various Member States, with due account for differing national circumstances. The rapporteur would also like psychological support and legal and financial assistance to be provided for whistleblowers.

### **Ensuring sufficient legal certainty to guarantee free speech**

Certain aspects of this proposal may dissuade persons wishing to report wrongdoing. This is particularly the case with regard to the degree of seriousness: it can be difficult for an individual to assess this and it is a factor that may be used as grounds to call into question the report. Thus, protection must be guaranteed whatever the seriousness of the information revealed, provided that it pertains to acts prejudicial to the public interest.

Similarly, the proposal for a directive includes provision for sanctions to discourage malicious and abusive whistleblowing. This would appear to be redundant since there are already provisions in national law punishing libel or reputational damage. By establishing additional penalties, the proposal risks having the effect of discouraging or deterring reporting, including wholly legitimate acts of whistleblowing. The rapporteur therefore proposes deleting this part of the text.

The rapporteur sees the proposal as a first step but it raises important questions concerning the issue of extending its scope. She is therefore of the opinion that it should be assessed, and, if necessary, revised without delay in order to make it more cross-cutting in nature and more easily understandable for citizens.



## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Pavel Svoboda  
Chair  
Committee on Legal Affairs  
BRUSSELS

Subject: Opinion on the legal basis for 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))

Dear Mr Chair,

On 24 September 2018, pursuant to Rule 39(5) of the Rules of Procedure, the Committee on Legal Affairs decided of its own motion to provide an opinion on the appropriateness of the additional legal bases introduced by amendments tabled in Committee, which would add provisions of the Treaty on the Functioning of the European Union to the original legal base of the proposal for a directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law (“the proposal”).

The Commission based its proposal on several sectorial legal bases. The legal base is expressed as follows:

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

Five amendments were tabled suggesting to add Articles 19(2), 77(2), 78, 79, 83(1), 153, 154, 157 and 352 TFEU. In respect of Article 153, two amendments propose to add the full article, while one only to add points (a), (b) and (e) of paragraph 1 of that Article, and another to add only points (a) and (b) of paragraph 1 of Article 153.

The proposed amendments to the legal base are accompanied by corresponding amendments to the scope of application of the proposed directive. Therefore, the final assessment of whether any further legal bases ought to be added to the proposal from the substantive point of view must be assessed on the basis of whether amendments modifying the scope of application are adopted and in the light of aim and content of the proposal as adopted. The current opinion on the legal basis focuses more on the procedural compatibility of the legal bases which are proposed to be added as well as with their compatibility with the measure chosen, i.e. a directive.

### **I - Background**

In its resolution of 24 October 2017 on ‘Legitimate measures to protect whistle-blowers acting in the public interest and its resolution of 20 January 2017 on the role of whistle-blowers in the protection of the EU’s financial interests<sup>1</sup>, Parliament called on the Commission to present a horizontal legislative proposal to guarantee a high level of protection for whistle-blowers in the EU, in both the public and private sectors, as well as in national and EU institutions.

Whistle-blower rules exist currently in some areas of Union law, namely in the Staff Regulations and in certain regulations relating to money laundering and financial markets.

The present proposal for a directive follows the sectorial approach in that it provides for whistle-blower rules that are applicable to breaches of Union law in the areas specified in the scope of application and the annex which lists the relevant pieces of Union legislation that are set out directly or by reference.

## **II - Relevant Treaty articles**

Article 19 TFEU reads as follows:

### ***Article 19***

*1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

*2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.*

Article 77 TFEU reads as follows:

### ***Article 77***

*1. The Union shall develop a policy with a view to:*

- (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;*
- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;*
- (c) the gradual introduction of an integrated management system for external borders.*

---

<sup>1</sup> 2016/2224(INI) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0402+0+DOC+XML+V0//EN> and (2016/2055(INI) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0004+0+DOC+XML+V0//EN>.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

- (a) the common policy on visas and other short-stay residence permits;
- (b) the checks to which persons crossing external borders are subject;
- (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
- (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78 TFEU reads as follows:

## **Article 78**

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

*(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.*

*3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.*

Article 79 TFEU reads as follows:

## **Article 79**

*1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:*

*(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;*

*(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;*

*(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;*

*(d) combating trafficking in persons, in particular women and children.*

*3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.*

*4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.*

*5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.*

Article 83 TFEU reads as follows:

## **Article 83**

*1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the*

*definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.*

*On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.*

*2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.*

*3. Where a member of the Council considers that a draft directive as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.*

*Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.*

Article 153 TFEU reads as follows:

### **Article 153**

*1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:*

- (a) improvement in particular of the working environment to protect workers' health and safety;*
- (b) working conditions;*
- (c) social security and social protection of workers;*
- (d) protection of workers where their employment contract is terminated;*
- (e) the information and consultation of workers;*
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;*
- (g) conditions of employment for third-country nationals legally residing in Union territory;*

*(h) the integration of persons excluded from the labour market, without prejudice to Article 166;*

*(i) equality between men and women with regard to labour market opportunities and treatment at work;*

*(j) the combating of social exclusion;*

*(k) the modernisation of social protection systems without prejudice to point (c).*

*2. To this end, the European Parliament and the Council:*

*(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;*

*(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.*

*The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.*

*In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees.*

*The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g).*

*3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 155.*

*In this case, it shall ensure that, no later than the date on which a directive or a decision must be transposed or implemented, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive or that decision.*

*4. The provisions adopted pursuant to this Article:*

*- shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,*

*- shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.*

*5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.*

Article 154 TFEU reads as follows:

## **Article 154**

- 1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.*
- 2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.*
- 3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.*
- 4. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.*

Article 157 TFEU reads as follows:

## **Article 157**

- 1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.*
- 2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.*

*Equal pay without discrimination based on sex means:*

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;*
  - (b) that pay for work at time rates shall be the same for the same job.*
- 3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.*
  - 4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.*

Article 352 TFEU reads as follows:

## **Article 352**

*1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.*

*2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.*

*3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.*

*4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.*

### **III - General principle for the choice of legal basis**

It is settled case law of the Court of Justice that "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure"<sup>1</sup>. The choice of an incorrect legal basis may therefore justify the annulment of the act in question.

In this case, it therefore has to be established whether the proposal either:

1. pursues a multiple purpose or has several components, and one of those is identifiable as the main or predominant purpose or component, whereas the others are merely incidental; or
2. simultaneously pursues a number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the others.

According to the case law of the Court of Justice, in the first case the act must be based on a single legal basis, namely that required by the main or predominant purpose or component, and in the second case the act will have to be founded on the various corresponding legal bases.<sup>2</sup>

Furthermore, following the established case law of the Court of Justice, the combination of several legal bases is possible, if they are indissociably linked, without one being secondary and indirect in relation to the others, but only if they do not entail incompatible decision-making procedures.<sup>3</sup> The legal bases proposed to be added have to be assessed in this light, that is, whether they do provide for the ordinary legislative procedure or are otherwise compatible with the legal base as proposed by the Commission.

---

<sup>1</sup> Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-440/05 *Commission v. Council* [2007] E.C.R. I-9097; Case C-411/06 *Commission v. Parliament and Council* [2009] ECR I-7585.

<sup>2</sup> See the Case C-411/06, cited above, paras 46-47.

<sup>3</sup> Judgments of 6 November 2008 in *Parliament v Council*, C-155/07, EU:C:2008:605, paragraph 37; and of 3 September 2009 in *Parliament v Council*, C-166/07, EU:C:2009:499, paragraphs 68 and 69.



#### **IV - Aim and content of the proposal**

As the Commission has constructed the legal base of its proposal, each provision mentioned corresponds to relevant parts in the scope of application and in the annex to the proposal. To the extent certain other areas are added to the scope and consequently to the annex, it would be appropriate to align the legal base by adding also the corresponding articles of the Treaty on the Functioning of the European Union to the legal base of the directive.

#### **V - Analysis and determination of the appropriate legal basis**

**Article 19(2) TFEU**, the EU legislature - acting in the ordinary legislative procedure - “*may adopt the basic principles of Union incentive measures*” to support action taken by Member States in the field of combatting discrimination.

However, such measures cannot entail “*harmonisation of the laws and regulations of the Member States*”. In this regard it should be pointed out that Article 19 of the proposal provides for a minimum harmonisation: “*Member States may introduce or retain provisions more favourable to the rights of the reporting persons than those set out in this Directive*”. Therefore, the addition of Article 19(2) TFEU as a legal basis is not advisable.

Under **Article 77(2) TFEU**, the EU legislature may adopt “*measures*” in the ordinary legislative procedure in the field of border checks, relating to visas and short-stay residence permits; checks at external borders; freedom of travel for third country nationals; integrated management system of the external borders; and the absence of controls at the internal borders.

This new legal basis seems to be compatible with the proposal from a procedural point of view.

Paragraph (1) of **Article 78 TFEU** is a general reference to the common asylum policy. Paragraph (3) concerns the adoption of provisional measures in situations of emergency and foresee only the consultation of the European Parliament.

Paragraph (2) of that Article allows for the adoption of “*measures*” in the ordinary legislative procedure for the common European asylum system, in specific fields such as a uniform status of asylum and subsidiary protection; temporary protection for displaced persons; common procedures for international protection; standards for the conditions of reception; and partnership and cooperation with third countries.

Therefore, it is unnecessary to add Article 78(1) TFEU as a legal basis, while Article 78(3) TFEU is not an appropriate legal basis for the proposal. Adding Article 78(2) TFEU seems to be compatible with the proposal from a procedural point of view.

**Article 79 TFEU** concerns the common immigration policy. It is important to point out that paragraphs (1) and (5) are not legal bases. Paragraph (3) provides for the conclusion of readmission agreements, so it cannot be the legal basis for the proposed directive. Paragraph (4) concerns the integration of legally residing third-country nationals, but excludes the harmonisation of the laws and regulations of Members States.

Paragraph (2) allows for the adoption of “*measures*” in the ordinary legislative procedure, such

as conditions of entry and residence; rights of legally resident third-country nationals; illegal immigration and unauthorised residence; and combatting trafficking in persons.

Therefore, only the inclusion of Article 79(2) TFEU seems to be possible from a procedural point of view.

While **Article 83(1) TFEU** provides for the ordinary legislative procedure, its paragraph (3) contains an “emergency brake” provision, according to which one Member State may refer the file to the European Council. In that case the ordinary legislative procedure shall be suspended.

For this reason, the combination of that provision with the other legal bases of the proposal is not possible.

It ought to be noted, that any measures based on Articles 77, 78, 79 and 83 TFEU will only apply to Ireland and the United Kingdom if those Member States opt in pursuant to Protocol No 21, and that, in accordance with Protocol No 22, no such measure will apply to Denmark. The addition of these Articles to the legal base would have no implication on the legislative procedure in Parliament but may result in a possible split of the proposal for the purpose of the procedure in Council as the number of Member States to which different parts of the Directive applies would be different.

**Article 153 TFEU** was added by amendments 66, 67, 68 and 69. Amendments 67 and 69 add only parts of that Article, namely points (a), (b) and (e). This Article lists specific areas of social policy, where the EU’s action may “*support and complement the activities of the Member States*”.

The procedure for some categories from this list is not compatible with the proposal, since it requires unanimity. The remaining areas covered by amendments, where the ordinary legislative procedure applies without the unanimity requirement are Article 153(1) TFEU, points a), b), e).

**Article 154 TFEU** it is not a legal basis for an act of the European Parliament. It contains procedural rules explicitly applicable to the Commission. Thus, it should not be considered to be added.

As regards **Article 157 TFEU** on the principle of equal pay, paragraph (3) of that Article provides for the adoption of “*measures*” in the ordinary legislative procedure to “*ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value*”.

Thus, Article 157(3) TFEU seems to be procedurally compatible with the proposal.

Finally, **Article 352 TFEU**, enables the European Union, and in particular the Council, to act if “*action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties*”, when they do not provide the necessary powers.

The proposal puts together several sectorial legal bases to construct what may seem as a

horizontal instrument but in effect is a bundle of sectorial measures. Article 352 TFEU can be used only in cases where the necessary powers are not provided for by the Treaties. As there are already a number of measures in Union law that provides for whistle-blower rules, this cannot be said to be the case here. Thus recourse to Article 352 TFEU is, by definition, incompatible with the approach chosen by the Commission proposal.

Furthermore, the choice to include Article 352 TFEU is procedurally incompatible with the other legal bases since it requires unanimity in the Council and consent of the Parliament. Therefore, Article 352 TFEU is not an appropriate legal basis for the proposal.

## **VI - Conclusion and recommendation**

The following provisions of the TFEU provide for the ordinary legislative procedure in such a way that is compatible with the existing legal base as proposed by the Commission: Articles 77(2), 78(2), 79(2), 153(1) (a), (b) and (e), and 157(3) TFEU.

With regard to Articles 77, 78 and 79 it ought to be noted that although the addition of these articles would not be incompatible with the procedure in Parliament, their inclusion in the legal base may result in a possible split of the proposal for the purpose of the procedure in Council.

Articles 83(1) and 352 TFEU are not compatible with the applicable ordinary legislative procedure and they ought not to be added as new legal bases. Furthermore, Article 352, which can be used only in cases where necessary powers are not provided for by the Treaties is, by definition, incompatible with the approach chosen by the Commission proposal.

With regard to Article 154 TFEU, it refers to rules applicable to the Commission and does not provide for a legal base of an act of the European Parliament and of the Council. It therefore cannot be added to the legal base.

Finally, addition of Article 19(2) TFEU is not advisable, since harmonisation is not allowed under this provision.

The final choice of legal bases identified as possible additions to the legal base as proposed by the Commission should however depend on the adoption of relevant amendments introducing specific policy areas to the scope of application of the proposed Directive.

At its meeting of 22 October 2018 the Committee on Legal Affairs accordingly decided, unanimously<sup>1</sup>, by 18 votes in favour, to recommend the lead Committee to take the conclusions above into consideration when assessing the amendments to the scope of the Directive.

---

<sup>1</sup> The following were present for the final vote: Pavel Svoboda (Chair), Mady Delvaux (Vice-Chair) Axel Voss (rapporteur for opinion), Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Heidi Hautala, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, Evelyn Regner, Tiemo Wölken, Francis Zammit Dimech, Tadeusz Zwiefka, Olle Ludvigsson (for Enrico Gasbarra, pursuant to Rule 200(2)).

Yours sincerely,

Pavel Svoboda

27.9.2018

## **(\*) OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY 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 (\*): Miguel Viegas

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

### **SHORT JUSTIFICATION**

The ECON draftsperson fully welcomes this proposal from the Commission for an EU-wide protection of whistle-blowers, as the Parliament already requested for a long time, among others in its PANA committee report and the previous JURI INI report, to which ECON contributed.

The proposal also builds upon the sectoral whistle-blowers protection measures which ECON introduced in previous legislation, such as the Anti-Money Laundering Directive (AMLD4-5) and the Market Abuse Regulation (MAR).

In his amendments, the ECON draftsperson aims to

- improve the definition (Article 3)
- extend the scope of workers' rights (Article 1)
- ensure material support (Article 15)
- delete Recital 21
- introduce the idea that a whistle-blower cannot replace the operational capacity of state surveillance services
- introduce a clear mechanism to assign a whistle-blower status for legal certainty
- introduce the possibility of anonymity
- facilitate the use of external channels without going through the internal channels

### **AMENDMENTS**

The Committee on Economic and Monetary 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

#### 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 threats or harm to the public interest which arise in this context. ***The purpose of this Directive is to create a climate of trust that enables whistleblowers to report observed or suspected breaches of law, wrongdoing and threats to public interest.*** By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation ***or legal consequences, or due to the lack of confidence in the usefulness of reporting.***

## Amendment 2

### 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 by whistleblowers are one upstream component of enforcement of Union law: they feed national and Union enforcement systems with information ***often*** leading to effective detection, investigation and prosecution of breaches of Union law.

## Amendment 3

**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) 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, and whistleblowers are in a privileged position to disclose ***such*** breaches, it is necessary to enhance enforcement by ensuring effective protection of whistleblowers from retaliation and ***to ensure that there are*** effective reporting channels.

**Amendment 4**

**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 standards ensuring effective whistleblower protection should ***only*** apply in those acts, policy areas ***and Member States*** where ***there is evidence that*** 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**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and

*Amendment*

(6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and

detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market.

detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market. ***Attention must also be paid to protecting those reporting misuse or misconduct regarding the EU budget and EU institutions.***

## **Amendment 6**

### **Proposal for a directive Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) A regime for the protection of persons reporting on breaches of Union law does not replace the need to strengthen the means of supervision of each Member State and their public structures, which must be increasingly capable of fighting tax fraud and money laundering, nor the need to participate in international cooperation in those areas.***

## **Amendment 7**

### **Proposal for a directive Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) In the area of financial services, the added value of whistleblower protection

(7) In the area of financial services, the added value of ***sectoral*** whistleblower



was already acknowledged by the Union legislator. In the aftermath of the financial crisis, which exposed serious shortcomings in the enforcement of the relevant rules, measures for the protection of whistleblowers were introduced in a significant number of legislative instruments in this area<sup>34</sup>. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU<sup>35</sup> provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

protection was already acknowledged by the Union legislator. In the aftermath of the financial crisis, which exposed serious shortcomings in the enforcement of the relevant rules, measures for the protection of whistleblowers were introduced in a significant number of legislative instruments in this area<sup>34</sup>. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU<sup>35</sup> provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

***However, a number of high profile cases involving European financial institutions have proven, that protection of whistleblowers within the full range of financial institutions still remain unsatisfactory and that fears of reprisals from both employers and authorities still prevent whistleblowers from coming forward with information on breaches of law.***

<sup>34</sup> Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector".

<sup>35</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>34</sup> Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector".

<sup>35</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

## Amendment 8

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) The importance of whistleblower protection in terms of preventing and

#### *Amendment*

(9) The importance of whistleblower protection in terms of preventing and

detering breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely road and railway transport.

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

detering breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance **immediately** the enforcement of safety standards for other transport modes, namely road and railway transport.

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

## Amendment 9

### 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

#### *Amendment*

(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment **unfortunately** remain a challenge and need to be reinforced as acknowledged in the Commission

actions to improve environmental compliance and governance" of 18 January 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, 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.

---

<sup>40</sup> COM(2018) 10 final.

<sup>41</sup> 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).

Communication "EU actions to improve environmental compliance and governance" of 18 January 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, 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.

---

<sup>40</sup> COM(2018) 10 final.

<sup>41</sup> 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 10

### 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 systems<sup>45</sup>, 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. 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

#### *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 seriously harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems<sup>45</sup>, 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. energy, health, transport, banking, etc.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable *in order* to prevent security incidents that would affect key economic and social activities and

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.

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.

---

<sup>45</sup> 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.

---

<sup>45</sup> 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 11

### 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 abuse<sup>49</sup>, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation<sup>50</sup>, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of 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 to ascertain which legal entities in the area of financial services, the prevention of money laundering **and** terrorist financing are currently obliged to establish internal reporting channels.

#### *Amendment*

(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse<sup>49</sup>, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation<sup>50</sup>, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of 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 to ascertain which legal entities in the area of financial services, the prevention of money laundering, ***the proper implementation of the Late Payments Directive 2011/7/EU, terrorist financing and cyber-crime*** are currently obliged to establish internal reporting channels. ***As these cases often involve highly complex international corporate and financial constructions, which are likely to be within the remit of differing jurisdictions, provisions for a unified point of contact for whistleblowers should be adopted.***

---

<sup>49</sup> OJ L 173, p. 1.

<sup>50</sup> 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).

---

<sup>49</sup> OJ L 173, p. 1.

<sup>50</sup> 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 12

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, ***consideration should be given to whether to amend*** the Annex to the present Directive in order to place it under its scope.

#### *Amendment*

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, the Annex to the present Directive ***should be amended*** in order to place it under its scope.

## Amendment 13

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

Workers and their representatives are entitled to raise issues with the competent national *or European Union* authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

#### **Amendment 14**

##### **Proposal for a directive Recital 21**

###### *Text proposed by the Commission*

(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. *In particular*, Moreover, the provision of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.

###### *Amendment*

(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. Moreover, the provision of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.

#### **Amendment 15**

##### **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 Union<sup>52</sup>, i.e. persons who, for a certain period of time, perform services for and under the direction of another person, in return of which they receive

###### *Amendment*

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union<sup>52</sup>, 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.

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. ***Considering the report by Transparency International published in the summer of 2018 underscoring the need for whistleblower protection within EU institutions as well, protection should extend similarly to EU staff.***

---

<sup>52</sup> 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.

---

<sup>52</sup> 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.

## **Amendment 16**

### **Proposal for a directive Recital 28**

#### *Text proposed by the Commission*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation.

#### *Amendment*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation ***or career prospects.***

## **Amendment 17**

### **Proposal for a directive**

## Recital 30 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 18

### Proposal for a directive Recital 34

*Text proposed by the Commission*

*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. 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.

(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, ***to ensure proper implementation and to ensure full, loyal and expeditious cooperation between competent authorities both within the Member State itself and with relevant authorities in other Member States.*** 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, ***in addition to*** the necessary capacities and powers, ***suitably qualified staff*** 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 19

### Proposal for a directive



## Recital 37

### *Text proposed by the Commission*

(37) For the effective detection and prevention of breaches of Union law it is vital that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

### *Amendment*

(37) For the effective detection and prevention of breaches of Union law it is vital that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving, ***analysing*** and following-up on reports.

## Amendment 20

### Proposal for a directive

#### Recital 39

### *Text proposed by the Commission*

(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.

### *Amendment*

(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in ***or closely linked to*** the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.

## Amendment 21

### 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 ***and***

*made available to other Member States' or European Union authorities where relevant. It remains the responsibility of both the transmitting and receiving authorities to ensure full protection of whistleblowers and to ensure full, loyal and expeditious cooperation.*

## Amendment 22

### Proposal for a directive Recital 62

#### *Text proposed by the Commission*

(62) *As a rule*, reporting persons should first use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry).

#### *Amendment*

(62) Reporting persons should first use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry).

## Amendment 23

### Proposal for a directive Recital 80

#### *Text proposed by the Commission*

(80) This Directive introduces minimum standards and Member States should have the power to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned persons.

#### *Amendment*

(80) This Directive introduces minimum standards and Member States should have the power *and be encouraged* to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned

persons.

## Amendment 24

### Proposal for a directive

#### Recital 84

##### *Text proposed by the Commission*

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause *serious* harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

##### *Amendment*

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

## Amendment 25

### Proposal for a directive

#### Article 1 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## Amendment 26

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – introductory part

*Text proposed by the Commission*

a) breaches falling within the scope of the Union acts ***set out in the Annex (Part I and Part II) as regards*** the following areas:

*Amendment*

a) breaches falling within the scope of the Union acts ***in*** the following areas:

## Amendment 27

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – point ii

*Text proposed by the Commission*

(ii) financial services, prevention of money laundering and terrorist financing;

*Amendment*

(ii) financial services, prevention of ***tax evasion, tax fraud, tax avoidance***, money laundering and terrorist financing, ***cyber-terrorism and cyber-crime, corruption and organised crime***;

## Amendment 28

### Proposal for a directive

#### Article 1 – paragraph 1 – point b

*Text proposed by the Commission*

b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

*Amendment*

b) ***Competition law, especially*** breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

## Amendment 29

### 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, **particularly** 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.

## Amendment 30

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

#### *Text proposed by the Commission*

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.

#### *Amendment*

2. Where **higher protection** 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.

## Amendment 31

### Proposal for a directive Article 2 – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. This Directive shall apply to reporting persons **working** in the private or public sector who acquired information on breaches **in a work-related context** including, at least, the following:

#### *Amendment*

1. This Directive shall apply to reporting persons **and facilitators** in the private or public sector who acquired information on breaches including, at least, the following:

## Amendment 32

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

*Text proposed by the Commission*

*Amendment*

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

a) persons having the status of worker, with the meaning of Article 45 TFEU, ***including part-time workers and fixed-term contract workers, as well as persons having the status of civil servants;***

**Amendment 33**

**Proposal for a directive**

**Article 2 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.

d) any persons working under the supervision and direction of contractors, subcontractors, ***service providers*** and suppliers.

**Amendment 34**

**Proposal for a directive**

**Article 2 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***da) persons facilitating the reporting, such as intermediaries or journalists.***

**Amendment 35**

**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 work-based relationships that have***

*terminated.*

## Amendment 36

### 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 report information on any of the breaches referred to in Article 1.**

## Amendment 37

### Proposal for a directive

#### Article 3 – paragraph 1 – point 1

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 38

### 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 to the public interest**;

## Amendment 39

### Proposal for a directive

#### Article 3 – paragraph 1 – point 4

##### *Text proposed by the Commission*

(4) ‘information on breaches’ means evidence about actual breaches as well as ***reasonable*** suspicions about potential breaches which have not yet materialised;

##### *Amendment*

(4) ‘information on breaches’ means evidence about actual breaches as well as suspicions about potential breaches which have not yet materialised;

## Amendment 40

### Proposal for a directive

#### Article 3 – paragraph 1 – point 5

##### *Text proposed by the Commission*

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur in the ***organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work;***

##### *Amendment*

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur in the ***event of a serious, imminent threat or where there is a risk of irreversible damage;***

## Amendment 41

### Proposal for a directive

#### Article 3 – paragraph 1 – point 8

##### *Text proposed by the Commission*

(8) ‘disclosure’ means making information on breaches ***acquired within the work-related context*** available to the public domain;

##### *Amendment*

(8) ‘disclosure’ means making information on breaches available to the public domain;

## Amendment 42

### Proposal for a directive

#### Article 3 – paragraph 1 – point 9



*Text proposed by the Commission*

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

*Amendment*

(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches ***or who is at risk of retribution; that includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees, interns, volunteers, student workers, temporary workers and former employees;***

**Amendment 43**

**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 44**

**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 appropriate remedial or mitigation action;***

## Amendment 45

### Proposal for a directive

#### Article 3 – paragraph 1 – point 14

##### *Text proposed by the Commission*

(14) ‘competent authority’ means any ***national*** authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

##### *Amendment*

(14) ‘competent authority’ means any ***legally responsible Union or Member State*** authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

## Amendment 46

### Proposal for a directive

#### Article 4 – paragraph 1

##### *Text proposed by the Commission*

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, ***if appropriate***.

##### *Amendment*

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners.

## Amendment 47

### Proposal for a directive

#### Article 4 – paragraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## Amendment 48

### Proposal for a directive

#### Article 4 – paragraph 3 – point b

*Text proposed by the Commission*

private legal entities with an annual business turnover or annual balance sheet total of EUR 10 million or more

*Amendment*

private legal entities with an annual business **or group** turnover or annual balance sheet total of EUR 10 million or more

## Amendment 49

### Proposal for a directive

#### Article 4 – paragraph 3 – point c

*Text proposed by the Commission*

c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering **or** terrorist financing, as regulated under the Union acts referred to in the Annex.

*Amendment*

c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering, terrorist financing **or cyber-crime**, as regulated under the Union acts referred to in the Annex

## Amendment 50

### Proposal for a directive

#### Article 4 – paragraph 6 – point d a (new)

*Text proposed by the Commission*

*Amendment*

**d a) European Union institutions, agencies and bodies;**

## Amendment 51

### Proposal for a directive

#### Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of

*Amendment*

a) channels for receiving the reports which are designed, set up and operated in a manner that ensures **an**

the identity of the reporting person and prevents access to non-authorised staff members;

***acknowledgement of the receipt of a report, that ensures*** the confidentiality ***or anonymity*** of the identity of the reporting person and prevents access to non-authorised staff members;

## Amendment 52

### Proposal for a directive Article 5 – paragraph 1 – point d

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 53

### Proposal for a directive Article 5 – paragraph 2 – subparagraph 1 – point a

*Text proposed by the Commission*

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

*Amendment*

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded; ***in case the phone conversation is recorded, the prior consent of the reporting person is necessary;***

## Amendment 54

### Proposal for a directive Article 5 – paragraph 2 – subparagraph 1 – point b

*Text proposed by the Commission*

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

*Amendment*

(b) physical meetings with the person or department designated to receive reports ***accompanied, if the reporting person requests it, by a union representative or his/her legal representative;***

## Amendment 55

### Proposal for a directive

#### Article 6 – paragraph 2 – point a

*Text proposed by the Commission*

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;

*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, ***allow for anonymous reporting and safeguard the whistle-blower personal data;***

## Amendment 56

### Proposal for a directive

#### Article 6 – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(a a) promote free and independent advice and legal support for reporting persons and intermediaries;***

## Amendment 57

### Proposal for a directive

#### Article 6 – paragraph 2 – point b

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 58

### Proposal for a directive

## Article 6 – paragraph 2 – point c

*Text proposed by the Commission*

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

*Amendment*

c) transmit the information contained in the report to competent bodies, offices or agencies of the Union ***or other Member States***, as appropriate, for further investigation.

## Amendment 59

**Proposal for a directive**

**Article 6 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***c a) cooperate fully, loyally and expeditiously with other Member States and EU authorities.***

## Amendment 60

**Proposal for a directive**

**Article 6 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.

3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person ***and all relevant other Member States and competent EU competent authorities, offices and agencies*** the final outcome of the investigations.

## Amendment 61

**Proposal for a directive**

**Article 6 – paragraph 4**

*Text proposed by the Commission*

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.

*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. ***Member States shall ensure that competent authorities receiving reports they do not have competence to address have clear procedures for handling all disclosed information securely and to confidentiality.***

**Amendment 62**

**Proposal for a directive**

**Article 7 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***c a) they promote free and independent advice and legal support for reporting persons and intermediaries;***

**Amendment 63**

**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 ***accompanied, if the reporting person requests it, by a union representative or his/her legal representative, while ensuring confidentiality and anonymity is respected.***

**Amendment 64**

**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 ***an adequate number of competent*** staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.

**Amendment 65**

**Proposal for a directive  
Article 8 – paragraph 2 – point c**

*Text proposed by the Commission*

c) maintaining contact with the reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation.

*Amendment*

c) maintaining ***confidential*** contact with the reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation.

**Amendment 66**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 67**

**Proposal for a directive  
Article 10 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***g a) contact information of civil society organisations where legal advice can be***



*obtained free of charge.*

## **Amendment 68**

### **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 ***and be granted the status of a reporting person*** 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. Protection extends to those who make inaccurate disclosures in good faith and protection to reporting persons should be in effect while the accuracy of a disclosure is being assessed.***

## **Amendment 69**

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

*Text proposed by the Commission*

*Amendment*

***1 a. A person who anonymously disclosed information that falls within the scope of this Directive and whose identity was revealed shall also qualify for protection under this Directive.***

## **Amendment 70**

### **Proposal for a directive Article 13 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1 b. Member States shall establish clear criteria for granting the rights and protection provided for in this Directive to***

*reporting persons from the moment of reporting.*

## **Amendment 71**

### **Proposal for a directive Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. *A person reporting externally shall qualify for protection under this Directive where one of the following conditions is fulfilled :* *deleted*
- a) *he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;*
  - b) *internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;*
  - c) *the use of internal reporting channels was not mandatory for the reporting person, in accordance with Article 4(2);*
  - d) *he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report;*
  - e) *he or she had reasonable grounds to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;*
  - f) *he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.*

## **Amendment 72**

**Proposal for a directive**  
**Article 13 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

**a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or**

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

**Amendment 73**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point g**

*Text proposed by the Commission*

*Amendment*

**g) coercion, intimidation, harassment or ostracism *at the workplace*;**

**g) coercion, intimidation, harassment, or ostracism;**

**Amendment 74**

**Proposal for a directive**  
**Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 14 a**

***Support for the reporting person or persons from an independent third party***

***1. Member States may provide for the person reporting or intending to make a***

*report or a public disclosure to be given support in the procedure. Such support shall ensure the identity of the persons referred to in this paragraph remains confidential and may, in particular, take the form of:*

*(a) free, impartial and confidential advice, especially on the scope of this Directive, the reporting channels and the protection granted to the reporting person and the rights of the concerned person;*

*(b) legal advice in the event of a legal dispute;*

*(c) psychological support;*

*2. This support may be provided by an independent administrative authority, trade unions or other organisations representing workers or an accredited body designated by the Member State, provided that it fulfils the following criteria:*

*(a) it is properly constituted according to the law of a Member State;*

*(b) it has a legitimate interest in ensuring compliance with the provisions laid down in this Directive; and*

*(c) it is a not-for-profit entity.*

## **Amendment 75**

### **Proposal for a directive Article 15 – paragraph 8**

#### *Text proposed by the Commission*

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 Council<sup>63</sup>, 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

#### *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 Council<sup>63</sup>, and in accordance with national law, Member States may ***decide to*** provide for further measures of legal and financial assistance and support for reporting persons in the

legal proceedings.

framework of legal proceedings, *as well as financial support in cases of temporary loss of income.*

---

<sup>63</sup> 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).

---

<sup>63</sup> 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).

## **Amendment 76**

### **Proposal for a directive Article 15 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 15 a***

***Duty to preserve the confidentiality of the identity of the reporting person***

***1. The identity of the reporting person or persons may not be disclosed without their express consent. This duty of confidentiality also includes information which may be used to identify the reporting person.***

***2. A person who possesses or obtains the information referred to in paragraph 1 shall be duty-bound not to disclose it.***

***3. The circumstances in which, by way of derogation from paragraph 2, information germane to the identity of the reporting person may be disclosed shall be limited to exceptional cases where disclosure of such information is a necessary and proportionate obligation required by Union or national law in the context of subsequent investigations or judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws. In such cases appropriate and effective steps must be taken to ensure the safety and well-being of the reporting***

*person or persons.*

***4. In the cases referred to in paragraph 3, the person designated to receive the report shall inform the reporting person in due time before disclosing his or her identity and consult with them on other possible alternative courses of action.***

***5. The internal and external reporting channels shall be designed in such a way as to ensure the identity of the reporting person remains confidential and to prevent access by non-authorised persons. Information shall be kept on which staff members have accessed confidential information, including time and dates of such access.***

#### **Amendment 77**

##### **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 ***or the anonymity*** of the identity of reporting persons.

#### **Amendment 78**

##### **Proposal for a directive**

##### **Article 17 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***d a) repeat the infringement reported by the reporting person once the case is closed.***

#### **Amendment 79**

##### **Proposal for a directive**

##### **Article 17 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons making malicious or abusive reports or disclosures, ***including measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures.***

**Amendment 80**

**Proposal for a directive  
Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

2. Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons making malicious or abusive reports or disclosures.

*Amendment*

***Article 17 a***

***Obligation to cooperate***

***1. Member States' authorities who are made aware of breaches of Union law, as covered by this directive, are obliged to expeditiously inform all other relevant Member States' authorities and/or EU offices and agencies and to cooperate with these in a loyal, effective and expeditious manner.***

***2. Member States' authorities who are notified by other Member States' authorities of potential breaches of union law, as covered by this directive, are required to provide a substantive response on actions taken in connection with said notification as well as an official notification of receipt and a point of contact for further cooperation.***

***3. Member States' authorities are obliged to safeguard confidential information received, especially as related to the identity and other personal information of reporting persons.***

***4. Member States' authorities are obliged to provide confidential access to the information received from reporting persons and to facilitate requests for***

*further information in a timely manner.*

*5. Member States' authorities are obliged to share all relevant information with other competent Member States authorities pertaining to breaches of Union or national law in international cases and to do so in a timely manner.*

## **Amendment 81**

### **Proposal for a directive**

#### **Article 17 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 17 b**

##### ***No Waiver of Rights and Remedies***

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

## **Amendment 82**

### **Proposal for a directive**

#### **Article 20 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2 a. When transposing this directive, Member States may consider the establishment of an independent whistleblower protection authority.*

## **Amendment 83**

### **Proposal for a directive**

#### **Article 22 a (new)**



***Article 22 a***

***Updating the Annexes***

***Whenever a new EU legal act falls into the material scope laid down in Article 1 (1) (a) or Article 1 (2), the Commission shall update the Annexes accordingly via a delegated act.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Protection of persons reporting on breaches of Union law
<b>References</b>	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 28.5.2018
<b>Opinion by</b> Date announced in plenary	ECON 28.5.2018
<b>Rapporteur</b> Date appointed	Miguel Viegas 31.5.2018
<b>Discussed in committee</b>	29.8.2018                      24.9.2018
<b>Date adopted</b>	24.9.2018
<b>Result of final vote</b>	+:                      24 -:                      15 0:                      7
<b>Members present for the final vote</b>	Pervenche Berès, Markus Ferber, Jonás Fernández, Giuseppe Ferrandino, Sven Giegold, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Barbara Kappel, Philippe Lamberts, Werner Langen, Sander Loones, Bernd Lucke, Olle Ludvigsson, Ivana Maletić, Marisa Matias, Gabriel Mato, Bernard Monot, Luděk Niedermayer, Stanisław Ożóg, Pirkko Ruohonen-Lerner, Anne Sander, Martin Schirdewan, Pedro Silva Pereira, Ernest Urtasun, Marco Valli, Tom Vandenkendelaere, Miguel Viegas, Steven Woolfe, Marco Zanni, Esther de Lange
<b>Substitutes present for the final vote</b>	Doru-Claudian Frunzuliță, Ramón Jáuregui Atondo, Rina Ronja Kari, Jeppe Kofod, Marcus Pretzell, Michel Reimon, Romana Tomc, Lieve Wierinck, Roberts Zīle, Sophia in 't Veld
<b>Substitutes under Rule 200(2) present for the final vote</b>	Edouard Martin, Julia Pitera, Virginie Rozière, Sabine Verheyen, Anna Záborská

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
ECR	Pirkko Ruohonen-Lerner
EFDD	Bernard Monot, Marco Valli
GUE/NGL	Rina Ronja Kari, Marisa Matias, Martin Schirdewan, Miguel Viegas
PPE	Anne Sander, Tom Vandenkendelaere
S&D	Pervenche Berès, Jonás Fernández, Giuseppe Ferrandino, Doru-Claudian Frunzuliță, Roberto Gualtieri, Ramón Jáuregui Atondo, Jeppe Kofod, Olle Ludvigsson, Edouard Martin, Virginie Rozière, Pedro Silva Pereira
Verts/ALE	Sven Giegold, Philippe Lamberts, Michel Reimon, Ernest Urtasun

15	-
ECR	Sander Loones
ENF	Barbara Kappel, Marcus Pretzell
NI	Steven Woolfe
PPE	Markus Ferber, Brian Hayes, Gunnar Hökmark, Werner Langen, Ivana Maletić, Gabriel Mato, Luděk Niedermayer, Julia Pitera, Romana Tomc, Sabine Verheyen, Anna Záborská

7	0
ALDE	Lieve Wierinck, Sophia in 't Veld
ECR	Bernd Lucke, Stanisław Ożóg, Roberts Zīle
ENF	Marco Zanni
PPE	Esther de Lange

Key to symbols:

+ : in favour

- : against

0 : abstention

8.11.2018

## **(\*) OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME 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 (\*): Maite Pagazaurtundúa Ruiz

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

### **AMENDMENTS**

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

#### **Amendment 1**

##### **Proposal for a directive**

##### **Citation 1**

###### *Text proposed by the Commission*

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

###### *Amendment*

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles **9, 10, 11, 12, 15**, 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207, 325(4) **and 352** thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

#### **Amendment 2**

##### **Proposal for a directive**

**Citation 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***Having regard to the Charter of Fundamental Rights of the European Union,***

**Amendment 3**

**Proposal for a directive  
Citation 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***Having regard to the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests,***

**Amendment 4**

**Proposal for a directive  
Citation 6 c (new)**

*Text proposed by the Commission*

*Amendment*

***Having regard to the European Parliament resolution of 24 October 2017 on legitimate measures to protect whistleblowers acting in the public interest when disclosing the confidential information of companies and public bodies,***

**Amendment 5**

**Proposal for a directive  
Citation 6 d (new)**

*Text proposed by the Commission*

*Amendment*

***Having regard to the European Convention on Human Rights,***

**Amendment 6**  
**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 ***or have worked*** for an organisation or are ***or were*** in contact with it are often the first to know about threats, ***criminal or illegal activities*** 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 in safeguarding the welfare of society ***and in protecting fundamental right, including freedom of expression and information.*** ***Whistleblowers play a crucial role in unveiling wrongdoing or unethical and dishonest conduct to the public interest. It is often difficult for them to assess the lawfulness of facts, but according to the European Court of Human Rights the legal assessment is not the task of the whistleblowers, as long as they act in good faith and the facts are correct.*** However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation, ***when they expose irregularities, mismanagement, misuse of funds, maladministration or potential corruption related to the activity of public and private bodies within the Union; they are not truly protected and do not feel protected.***

**Amendment 7**  
**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

*Amendment*

(2) At Union level, reports by whistleblowers ***and investigative journalists*** are one upstream component of enforcement of Union law: they feed national and Union enforcement systems

effective detection, investigation and prosecution of breaches of Union law.

with information leading to effective detection, investigation and prosecution of breaches of Union law.

## Amendment 8

### 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) Breaches of Union law may cause serious harm to the public interest ***and the enjoyment of human rights and fundamental freedoms***. It is necessary to ***ensure*** effective protection of whistleblowers from retaliation and ***introduce*** effective ***and confidential*** reporting channels.

## Amendment 9

### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. ***The consequences of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how*** insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and the Union as a whole.

*Amendment*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. Whistleblowers ***shall be protected if they disclose breaches of law or wrongdoing or misconduct in the public interest***. Insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and the Union as a whole.

## Amendment 10

### 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 **with a general and comprehensive approach** should apply in **all Union and national** 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 **or national** law cause serious harm to the public interest.

## Amendment 11

### Proposal for a directive

#### Recital 9

### *Text proposed by the Commission*

(9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely road and railway transport.

### *Amendment*

(9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). **Inter alia** it is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely road and railway transport.

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and



follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

## **Amendment 12**

### **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 systems<sup>45</sup>, 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. 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.

---

<sup>45</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of

follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

#### *Amendment*

(14) The protection of privacy and personal data, ***enshrined in articles 7 and 8 of the Charter of Fundamental Rights and article 8 of the European Convention on Human Rights (ECHR)***, 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 systems<sup>45</sup>, 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. energy, health, transport, banking, etc.) and providers of key digital 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, ***as well as to prevent any infringement of the Union data protection legislation***. It helps ensuring the continuity of services which are essential for society.

---

<sup>45</sup> 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.

6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

## Amendment 13

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

#### *Amendment*

(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. ***Investigative journalists also play a crucial role in revealing wrongdoing connected to all these areas; they represent a very exposed group of professionals, often paying with their jobs, freedom and even with their lives disclosure of massive irregularities and corruption schemes; therefore, special measures to protect investigative journalists should be included in a horizontal legislative proposal for the protection of whistle-blowers. Investigative journalism and*** whistleblower protection ***are*** necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal

activities.

## Amendment 14

### Proposal for a directive Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

***(18a) Whistleblowers who report misconduct and violations of labour and social law are key to ensuring safe and just workplaces. Breaches of rules in an organisation that are reported by persons who work or worked there or by persons who were in contact with it, shall be ensured full protection under this regulation.***

## Amendment 15

### Proposal for a directive Recital 19

*Text proposed by the Commission*

*Amendment*

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, ***consideration*** should be ***given to whether to amend*** the Annex to the present Directive in order to place it under its scope.

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, ***it*** should be ***added to*** the Annex to the present Directive in order to place it under its scope.

## Amendment 16

### Proposal for a directive Recital 20

*Text proposed by the Commission*

*Amendment*

(20) This Directive should be without prejudice to the protection afforded to employees when reporting on breaches of Union ***employment*** law. In particular, in the area of occupational safety and health,

(20) This Directive should be without prejudice to the protection afforded to employees when reporting on ***misconduct or wrongdoing or on*** breaches of Union ***as well as national*** law. In particular, in the

Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

## Amendment 17

### Proposal for a directive Recital 21

#### *Text proposed by the Commission*

(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. ***In particular***, Moreover, the provision of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.

## Amendment 18

### Proposal for a directive Recital 22

#### *Amendment*

(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. ***Limitations on the use of national security information should be limited and clearly defined.*** Moreover, the provision of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.

*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 make use of their right to freedom of expression. Freedom of expression, ***which is essential in a democratic society and is*** 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 19**

**Proposal for a directive**  
**Recital 23**

*Text proposed by the Commission*

(23) Accordingly, this Directive draws upon the case law of the European Court of Human Rights on the right to freedom of expression, and the principles developed on this basis by the Council of Europe in its 2014 Recommendation on Protection of Whistleblowers<sup>51</sup>.

---

<sup>51</sup> CM/Rec(2014)7.

*Amendment*

(23) Accordingly, this Directive draws upon the case law of the European Court of Human Rights on the right to freedom of expression, ***and in particular its judgment of 12 February 2008 in the case of Guja v. Moldova***, and the principles developed on this basis by the Council of Europe in its 2014 Recommendation on Protection of Whistleblowers<sup>51</sup>.

---

<sup>51</sup> CM/Rec(2014)7.

**Amendment 20**

**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.*

**Amendment 21**  
**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

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

**Amendment 22**  
**Proposal for a directive**  
**Recital 26**

of work-related retaliation. The underlying reason for providing them with protection is their position of vulnerability vis-à-vis the person on whom they de facto depend for work. *No employment relationship should restrict someone's right to freedom of expression.*

*Amendment*

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

(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 Union<sup>52</sup>, 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.

(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 Union<sup>52</sup>, 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, ***including public and civil servants***. Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, which are types of relationships where standard protections against unfair treatment are often difficult to apply. ***Finally, protection should also be granted to persons whose employment contract has ended, as well as paid and unpaid trainees.***

---

<sup>52</sup> 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.

---

<sup>52</sup> 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.

### **Amendment 23**

#### **Proposal for a directive**

#### **Recital 27**

(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

(27) Protection should also extend ***to persons facilitating the reporting and to investigative journalists who acquire and publish information on breaches, as well as*** to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU,

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 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.

can play a key role in exposing breaches of the law and may find themselves in a position of economic *or other type of* 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 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 24**

### **Proposal for a directive Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

***(27a) Protection should also extend to people facilitating the reporting, intermediaries, investigative journalists, civil society organisations who, through***



*their activities, guarantee the effective disclosure of the potential or occurred breach.*

## Amendment 25

### Proposal for a directive Recital 28

*Text proposed by the Commission*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation.

*Amendment*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches ***or for supporting whistleblowers reporting***. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation. ***Retaliation against investigators or reporters could take the form of strategic litigation suits, for example regarding libel or defamation.***

## Amendment 26

### Proposal for a directive Recital 28 a (new)

*Text proposed by the Commission*

*Amendment*

***(28a) Protection should be also afforded to all individuals working within all the institutions, bodies and agencies of the Union as well as to individuals working in the European entities located outside the Union territory. European Union institutions, agencies and bodies should adopt and implement internal rules protecting whistleblowers in accordance with Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC), ('the Staff Regulations').***

## Amendment 27

### Proposal for a directive Recital 28 b (new)

*Text proposed by the Commission*

*Amendment*

***(28b) Effective protection implies adequate training and a resource office available to inform whistleblowers on their rights, disclosure options, and limitations so they are aware of their rights and responsibilities. This should not constitute a replacement for access to independent legal advice which should also be available.***

## Amendment 28

### Proposal for a directive Recital 30

*Text proposed by the Commission*

*Amendment*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of ***information which is already in the public domain or of*** unsubstantiated rumours and hearsay.

(30) Effective prevention of ***misconduct or wrongdoing or of*** breaches of Union ***as well as national*** law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of unsubstantiated rumours and hearsay. ***Protection should be given to individuals working in institutions within the Union, but also to individuals working in European entities located outside Union territory. It should also apply to officials as well as other employees and interns working at the institutions, agencies and bodies of the Union.***

## Amendment 29

**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 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 which causes them detriment.

**Amendment 30**

**Proposal for a directive**  
**Recital 32 a (new)**

*Text proposed by the Commission*

*Amendment*

***(32a) Potential whistleblowers should be free to rely on the reporting channel of their choice, be it internal or external, or to decide to disclose information to the public domain, for example through the media, provided that the confidentiality and anonymity of their disclosure are fully safeguarded, that data protection is ensured and that the journalists, bloggers or media in general are never compelled to reveal the identity of their sources. Whistleblowers should be protected no matter what their choice of reporting channel is.***

**Amendment 31**

**Proposal for a directive**  
**Recital 33**

*Text proposed by the Commission*

*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.

(33) Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers ***as well as to investigative journalists and any form of harassment*** 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 32**  
**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, ***and which also guarantee the highest possible level 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 an investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate. ***The staff of those authorities shall be specialised and have proper training and formation regarding European and national data protection legislation. At the same time, an independent advisory and referral Unit within the European Ombudsman should be established with a view to coordinating with Member States and advising on***

*specific measures for the protection of whistleblowers and investigative journalists.*

### **Amendment 33**

#### **Proposal for a directive Recital 39 a (new)**

*Text proposed by the Commission*

*Amendment*

**(39a)** *Reporting persons should be allowed to freely choose the most appropriate channel of reporting and disclosure of information, be it internal or external, without any strict hierarchy among them.*

### **Amendment 34**

#### **Proposal for a directive Recital 40**

*Text proposed by the Commission*

*Amendment*

**(40)** *It should be clear that, in the case of private legal entities which do not provide for internal reporting channels, reporting persons should be able to report **directly externally** to the competent authorities and **such persons** should enjoy the protection against retaliation provided by this Directive.*

**(40)** Reporting persons should be able to report to the competent authorities and should enjoy the protection against retaliation provided by this Directive.

### **Amendment 35**

#### **Proposal for a directive Recital 42**

*Text proposed by the Commission*

*Amendment*

**(42)** Provided the confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical complaint

**(42)** Provided the **anonymity or** confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical

box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee confidentiality of the identity of the reporting person.

complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee ***anonymity nor*** confidentiality of the identity of the reporting person.  
***Anonymous reporting should be taken into consideration and protection of anonymous whistleblowers should be put in place, in cases where such protection is required.***

**Amendment 36**  
**Proposal for a directive**  
**Recital 43**

*Text proposed by the Commission*

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

*Amendment*

(43) ***Upon an assessment to be conducted on a case-by-case basis,*** third parties may also be authorised to receive reports on behalf of private and public entities, provided they offer appropriate guarantees of respect for independence, ***anonymity,*** confidentiality, data protection and secrecy. These can be external reporting platform providers, external counsel or auditors or trade union representatives.

**Amendment 37**  
**Proposal for a directive**  
**Recital 44**

*Text proposed by the Commission*

(44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality reports by the employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person

*Amendment*

(44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality ***and with respect of anonymity, if appropriate,*** reports by the employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the

who acquires information through his/her work-related activities with the entity and the group.

group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

## Amendment 38

### Proposal for a directive Recital 45

#### *Text proposed by the Commission*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest and independence. In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.

#### *Amendment*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest, ***proper know-how*** and independence. In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.

## Amendment 39

### Proposal for a directive Recital 47

#### *Text proposed by the Commission*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons,

#### *Amendment*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. ***They should also provide information on rights guaranteed to whistleblowers, particularly their right to disclosure guaranteed by***

beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

***this Directive, and their right to turn to civil society organisations involved in whistleblower protection to this end, in particular those who provide strategic and legal advice to whistleblowers.*** Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

**Amendment 40**  
**Proposal for a directive**  
**Recital 48**

*Text proposed by the Commission*

(48) Effective detection and prevention of breaches of Union law requires ensuring that potential whistleblowers can easily **and** in full confidentiality bring the information they possess to the attention of the relevant competent authorities which are able to investigate and to remedy the problem, where possible.

*Amendment*

(48) Effective detection and prevention of breaches of Union law requires ensuring that potential whistleblowers can easily, **anonymously or** in full confidentiality bring the information they possess to the attention of the relevant competent authorities which are able to investigate and to remedy the problem, where possible.

**Amendment 41**  
**Proposal for a directive**  
**Recital 50**

*Text proposed by the Commission*

(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report, **as well as to avoid unnecessary**

*Amendment*

(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report. Such timeframe should not exceed



**public disclosures.** Such timeframe should not exceed three months, but could be extended to six months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

three months, but could be extended to six months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

## **Amendment 42**

### **Proposal for a directive Recital 54**

#### *Text proposed by the Commission*

(54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.

#### *Amendment*

(54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.  
***Potential whistleblowers should always be able to freely decide whether to use internal or external reporting channels.***

## **Amendment 43**

### **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 privacy of***

*the reporter.*

## Amendment 44

### Proposal for a directive Recital 58

#### *Text proposed by the Commission*

(58) Protection of personal data of the reporting and concerned person is crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the report that should include a secure system within the competent authority with restricted access rights for authorised staff only.

#### *Amendment*

(58) Protection of personal data of the reporting and concerned person, ***as well as confidentiality of information***, is crucial in order to avoid unfair treatment, ***any harassment or intimidation***, or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the report that should include a secure system within the competent authority with restricted access rights for authorised staff only.

## Amendment 45

### Proposal for a directive Recital 59

#### *Text proposed by the Commission*

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them should guarantee that those procedures are adequate and thus serving their purpose.

#### *Amendment*

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them, ***including recommendations by civil society organisations***, should guarantee that those procedures are adequate and thus serving their purpose.

## Amendment 46

### Proposal for a directive

#### Recital 60

*Text proposed by the Commission*

(60) To enjoy protection, the reporting persons should reasonably believe, in light of the circumstances and the information available to them at the time of the reporting, that the matters reported by them are true. This reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection. At the same time, it ensures that protection is not lost where the reporting person made an inaccurate report in ***honest error***. In a similar vein, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope.

*Amendment*

(60) To enjoy protection, the reporting persons should reasonably believe, in light of the circumstances and the information available to them at the time of the reporting, that the matters reported by them are true. This reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection. At the same time, it ensures that protection is not lost where the reporting person made an inaccurate report in ***good faith***. In a similar vein, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope.

## Amendment 47

### Proposal for a directive

#### Recital 61

*Text proposed by the Commission*

(61) The ***requirement of a tiered*** use of reporting channels, ***as a general rule, is*** necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest ***as well as to prevent unjustified reputational damage from public disclosure***. At the same time, some ***exceptions*** to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the

*Amendment*

(61) The use of ***the different*** reporting channels necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest. At the same time, some ***rules*** to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case. Moreover, it is necessary to protect public disclosures

individual circumstances of the case. Moreover, it is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, *whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights*<sup>57</sup>.

taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom.

---

<sup>57</sup> *One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure; see, for instance, Guja v. Moldova [GC], no 14277/04, ECHR 2008.*

## Amendment 48

### Proposal for a directive Recital 62

*Text proposed by the Commission*

(62) *As a rule*, reporting persons *should* first use the internal channels at their disposal and report to their employer. *However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was*

*Amendment*

(62) Reporting persons *can* first use the internal channels at their disposal and report to their employer.

*taken to address the breach of law despite the positive results of the enquiry).*

## Amendment 49

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

##### *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 ***or their anonymous report would not be investigated***; 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 ***and anonymous reports shall be investigated upon, if well evidenced***. 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 and detection of money laundering and terrorist financing or in the area of financial services.

## Amendment 50

**Proposal for a directive**  
**Recital 64**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 51**

**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

*Amendment*

(65) Reporting persons ***and intermediaries*** 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

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.

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. ***Protection should also be afforded in case of direct and/or indirect retaliation taken by third parties.***

## Amendment 52

### Proposal for a directive Recital 67

#### *Text proposed by the Commission*

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

#### *Amendment*

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

manner or even prevented.

in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

## **Amendment 53**

### **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 **individuals** 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 54**

### **Proposal for a directive Recital 71**

#### *Text proposed by the Commission*

(71) Beyond an explicit prohibition of retaliation provided in law, it is crucial that reporting persons who do suffer retaliation have access to legal remedies. The appropriate remedy in each case will be determined by the kind of retaliation suffered. It may take the form of actions for reinstatement (for instance, in case of dismissal, transfer or demotion, or of withholding of training or promotion) or for restoration of a cancelled permit, licence or contract; compensation for actual and future financial losses (for lost past wages, but also for future loss of income, costs linked to a change of

#### *Amendment*

(71) Beyond an explicit prohibition of retaliation provided in law, it is crucial that reporting persons who do suffer retaliation have access to legal remedies. The appropriate remedy in each case will be determined by the kind of retaliation suffered. It may take the form of actions for reinstatement (for instance, in case of dismissal, transfer or demotion, or of withholding of training or promotion) or for restoration of a cancelled permit, licence or contract; compensation for actual and future financial losses (for lost past wages, but also for future loss of income, costs linked to a change of



occupation); compensation for other economic damage such as legal expenses and costs of medical treatment, and for intangible damage (pain and suffering).

occupation); compensation for other economic damage such as legal expenses and costs of medical **and psychological** treatment, and for intangible damage (pain and suffering).

## Amendment 55

### Proposal for a directive Recital 75

#### *Text proposed by the Commission*

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need ***might be key, in certain cases***, for the effective enforcement of their rights to protection.

---

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

## Amendment 56

### Proposal for a directive Recital 80

#### *Text proposed by the Commission*

(80) This Directive introduces minimum

#### *Amendment*

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need ***is key*** for the effective enforcement of their rights to protection.

---

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

(80) This Directive introduces minimum

standards and Member States should have the power to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned persons.

standards and Member States should have the power ***and be encouraged*** to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned persons.

## **Amendment 57**

### **Proposal for a directive Recital 81**

#### *Text proposed by the Commission*

(81) In accordance with Article 26(2) TFEU, the internal market needs to comprise an area without internal frontiers in which the free and safe movement of goods and services is ensured. The internal market should provide Union citizens with added value in the form of better quality and safety of goods and services, ensuring high standards of public health and environmental protection as well as free movement of personal data. Thus, Article 114 TFEU is the appropriate legal basis to adopt the measures necessary for the establishment and functioning of the internal market. In addition to Article 114 TFEU, this Directive should have additional specific legal bases in order to cover the fields that rely on Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 168, 169 **and 207** TFEU and Article 31 of the Euratom Treaty for the adoption of Union measures. Since this Directive also aims at better protecting the financial interests of the Union, Article 325(4) TFEU should be included as a legal basis.

#### *Amendment*

(81) In accordance with Article 26(2) TFEU, the internal market needs to comprise an area without internal frontiers in which the free and safe movement of goods and services is ensured. The internal market should provide Union citizens with added value in the form of better quality and safety of goods and services, ensuring high standards of public health and environmental protection as well as free movement of personal data. Thus, Article 114 TFEU is the appropriate legal basis to adopt the measures necessary for the establishment and functioning of the internal market. In addition to Article 114 TFEU, this Directive should have additional specific legal bases in order to cover the fields that rely on Articles **9, 10, 11, 12, 15**, 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 168, 169, **207 and 352** TFEU and Article 31 of the Euratom Treaty for the adoption of Union measures. Since this Directive also aims at better protecting the financial interests of the Union, Article 325(4) TFEU should be included as a legal basis.

## **Amendment 58**

### **Proposal for a directive Recital 84**

*Text proposed by the Commission*

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

*Amendment*

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where ***misconduct or wrongdoing or*** breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

**Amendment 59**

**Proposal for a directive**

**Recital 85**

*Text proposed by the Commission*

(85) This Directive respects fundamental rights and ***observes*** the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive must be implemented in accordance with those rights and principles. ***In particular, this Directive seeks to ensure*** full respect for freedom of expression and information, the right to protection of personal data, the freedom to conduct a business, the right to a high level of consumer protection, the right to an effective remedy and the rights of defence.

*Amendment*

(85) This Directive respects fundamental rights and the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive must be implemented in accordance with those rights and principles ***by ensuring*** full respect for, ***inter alia***, freedom of expression and information, the right to protection of personal data, the freedom to conduct a business, the right to a high level of consumer protection, the right to ***fair and just working conditions, the right to a high level of human health protection, the***

*right to a high level of environmental protection, the right to good administration, the right to an effective remedy and the rights of the defence.*

#### **Amendment 60**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – introductory part**

###### *Text proposed by the Commission*

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

###### *Amendment*

1. With a view to enhancing the enforcement of Union *and national* law and policies, this Directive lays down common minimum standards for the protection of persons reporting *particularly* on the following unlawful activities, abuse of law *or any misconduct, harm or threat to the public interest*:

#### **Amendment 61**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point a**

###### *Text proposed by the Commission*

a) *breaches falling within the scope of the Union acts set out in the Annex (Part I and Part II) as regards the following areas:*

*(i) public procurement;*

*(ii) financial services, prevention of money laundering and terrorist financing;*

*(iii) product safety;*

*(iv) transport safety;*

*(v) protection of the environment;*

*(vi) nuclear safety;*

*(vii) food and feed safety, animal health and welfare;*

*(viii) public health;*

###### *Amendment*

*deleted*

*(ix) consumer protection;*  
*(x) protection of privacy and personal data, and security of network and information systems.*

## **Amendment 62**

### **Proposal for a directive Article 1 – paragraph 1 – point d**

*Text proposed by the Commission*

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.

*Amendment*

d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, ***particularly*** 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.

## **Amendment 63**

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

*Text proposed by the Commission*

*Amendment*

***d a) all the remaining sectors in which the public interest is harmed or there is a breach of EU law.***

## **Amendment 64**

### **Proposal for a directive Article 2 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. This Directive shall apply to reporting persons ***working*** in the private or public sector who acquired information on breaches ***in a work-related context*** including, at least, the following:

*Amendment*

1. This Directive shall apply to reporting persons in the private or public sector who acquired information on breaches including, at least, the following:

**Amendment 65**  
**Proposal for a directive**  
**Article 2 – paragraph 1 – point a**

*Text proposed by the Commission*

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

*Amendment*

a) persons having the status of worker ***or former worker*** with the meaning of Article 45 TFEU ***as interpreted by the Court of Justice of the European Union regardless of whether they are paid or unpaid;***

**Amendment 66**

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

*Text proposed by the Commission*

*Amendment*

***da) European Union staff members, as defined within the Staff Regulation;***

**Amendment 67**

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

*Text proposed by the Commission*

*Amendment*

***db) consultants, trainees, student workers, temporary workers and former employees;***

**Amendment 68**

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

*Text proposed by the Commission*

*Amendment*

***dc) investigative journalists;***

**Amendment 69**

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

*Text proposed by the Commission*

*Amendment*

***dd) persons who are or were in contact with organisations.***

**Amendment 70**  
**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 terminated.***

**Amendment 71**

**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 report information on any of the breaches referred to in Article 1.***

**Amendment 72**

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

*Text proposed by the Commission*

*Amendment*

**2b. This Directive shall also apply to persons facilitating the reporting such as intermediaries and any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.**

## **Amendment 73**

### **Proposal for a directive Article 2 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

**2c. This Directive shall also apply to legal and natural person associated with a reporting person if such person makes probable that suffered a detriment due to connection to a reporting person.**

## **Amendment 74**

### **Proposal for a directive Article 2 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

**2d. This Directive shall apply to officials as well as to other employees and interns working within the institutions, agencies and bodies of the European Union.**

## **Amendment 75**

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

*Text proposed by the Commission*

*Amendment*

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

(1) ‘breaches’ means actual or potential unlawful activities or abuse of Union **law**;



## Amendment 76

### Proposal for a directive

#### Article 3 – paragraph 1 – point 3

##### *Text proposed by the Commission*

(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;

##### *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 **or distort** the object or the purpose pursued by the applicable rules;

## Amendment 77

### Proposal for a directive

#### Article 3 – paragraph 1 – point 5

##### *Text proposed by the Commission*

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur **in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work;**

##### *Amendment*

(5) ‘report’ means the provision, **in good faith**, of information relating to a breach which has occurred or is likely to occur;

## Amendment 78

### Proposal for a directive

#### Article 3 – paragraph 1 – point 8

##### *Text proposed by the Commission*

(8) ‘disclosure’ means making information on breaches **acquired within the work-related context** available to the public domain;

##### *Amendment*

(8) ‘disclosure’ means making information on breaches available to the public domain;

## Amendment 79

### Proposal for a directive

#### Article 3 – paragraph 1 – point 9 a (new)

**(9a) ‘intermediary’ means a natural or legal person who facilitates the report or disclosure;**

## **Amendment 80**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 10**

*Text proposed by the Commission*

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

*Amendment*

(10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches.

## **Amendment 81**

### **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 or external reporting which causes or may cause unjustified detriment to the reporting person, **his or her family members, relatives and facilitators;**

## **Amendment 82**

### **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

*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;

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 appropriate remedial or mitigation action;***

#### **Amendment 83**

##### **Proposal for a directive**

##### **Article 3 – paragraph 1 – point 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14 a) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person, in accordance with Regulation (EU) 2016/679;***

#### **Amendment 84**

##### **Proposal for a directive**

##### **Article 3 – paragraph 1 – point 14 b (new)**

*Text proposed by the Commission*

*Amendment*

***(14b) ‘processing’ means any operation or set of operations which is performed on personal data or onsets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, in accordance with Regulation (EU) 2016/679;***

## Amendment 85

### Proposal for a directive

#### Article 4 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, if appropriate.

*Amendment*

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, ***and protecting reporting persons***, following consultations with social partners, if appropriate.

## Amendment 86

### Proposal for a directive

#### Article 4 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by other persons who are in contact with the entity in the context of their activities, referred to in Article 2(1)(b), (c) and (d).

## Amendment 87

### Proposal for a directive

#### Article 4 – paragraph 3 – point c

*Text proposed by the Commission*

c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under ***the*** Union ***acts referred to in the Annex.***

*Amendment*

c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under Union ***law***;

## Amendment 88

### Proposal for a directive

#### Article 4 – paragraph 6 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**aa) European Union institutions,  
agencies and bodies;**

## Amendment 89

### Proposal for a directive

#### Article 4 – paragraph 6 – point c

*Text proposed by the Commission*

*Amendment*

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

**c) municipalities;**

## Amendment 90

### Proposal for a directive

#### Article 4 – paragraph 6 – point d a (new)

*Text proposed by the Commission*

*Amendment*

**da) European Union institutions,  
bodies, offices and agencies set up by, or  
on the basis of, the Treaty on European  
Union, the Treaty on the Functioning of  
the European Union or the Euratom  
Treaty;**

## Amendment 91

### Proposal for a directive

#### Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

**a) channels for receiving the reports  
which are designed, set up and operated in  
a manner that ensures the confidentiality of  
the identity of the reporting person and  
prevents access to non-authorised staff  
members;**

**a) channels for receiving the reports  
which are designed, set up and operated in  
a manner that ensures the confidentiality of  
the identity of the reporting person, *allows  
for anonymous disclosures* and prevents  
access to non-authorised staff members;**

## Amendment 92

### Proposal for a directive

#### Article 5 – paragraph 1 – point e

*Text proposed by the Commission*

e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

*Amendment*

e) clear, **transparent** and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

## Amendment 93

### Proposal for a directive

#### Article 5 – paragraph 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

**ea) the prompt acknowledgement of receipt of written reports to the postal or electronic address indicated by the reporting person.**

## Amendment 94

### Proposal for a directive

#### Article 5 – paragraph 2 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

(a) written reports in electronic or paper format, **including options for anonymous disclosures, as well as disclosures employing cryptographic methods**, and/or oral report through telephone lines, whether recorded or unrecorded; **in case the phone conversation is recorded, the prior consent of the reporting person is necessary**;

## Amendment 95

### Proposal for a directive

#### Article 5 – paragraph 2 – subparagraph 1 – point b

*Text proposed by the Commission*

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

*Amendment*

(b) physical meetings with the person or department designated to receive reports ***accompanied, if the reporting person requests it, by a union representative, by a representative of civil society or his/her legal representative;***

## Amendment 96

### Proposal for a directive

#### Article 5 – paragraph 2 – subparagraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) reporting channels, including digital mechanisms, and institutional arrangements shall provide for safe, secure, confidential and anonymous disclosures.***

## Amendment 97

### Proposal for a directive

#### Article 6 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States shall designate the authorities competent to receive and handle reports.

1. Member States shall designate the authorities competent to receive and handle reports. ***This includes designating specific, independent competent authorities entitled to receive and proceed reports on classified or sensitive information.***

## Amendment 98

### Proposal for a directive

## Article 6 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The European Court of Auditors and the European Ombudsman shall publish, every year:***

***a) Special Reports containing statistics and a clear track record of whistle-blowing cases identified in the European institutions;***

***b) the follow-up of the institutions concerned in relation to the cases revealed, according to the provisions set therein;***

***c) the outcome of each investigation open as a result of the information received from whistle-blowers;***

***d) the measures foreseen in every case for the whistle-blowers' protection.***

## Amendment 99

### 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 both secure and ensure confidentiality ***and allow for anonymous disclosures***, for receiving and ***processing*** information provided by the reporting person, ***regardless of the country where he or she resides***;

## Amendment 100

### Proposal for a directive

#### Article 6 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

b) give feedback to the reporting person about the follow-up of the report

b) give feedback to the reporting person ***or intermediaries*** about the follow-



within a reasonable timeframe not exceeding three months or six months in duly justified cases;

up of the report within a reasonable timeframe not exceeding three months or six months in duly justified cases;

## **Amendment 101**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

c) transmit, ***while further ensuring confidentiality and/or anonymity of the reporting person***, the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.

## **Amendment 102**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Reporting channels, including digital mechanisms, and institutional arrangements shall provide for safe, secure, confidential and anonymous disclosures.***

## **Amendment 103**

### **Proposal for a directive**

#### **Article 6 – paragraph 4**

*Text proposed by the Commission*

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.

*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 ***promptly*** informed. ***Member***

*States shall ensure that competent authorities receiving reports they do not have competence to address have clear procedures for handling all disclosed information securely with due regard to confidentiality or anonymity.*

#### **Amendment 104**

##### **Proposal for a directive Article 7 – title**

*Text proposed by the Commission*

7 *Design* of external reporting channels

*Amendment*

7 *Structure and functioning* of external reporting channels

#### **Amendment 105**

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

*Text proposed by the Commission*

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;

*Amendment*

b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information, *including the identity of the reporting person, the intermediaries as well as the concerned person, allows for anonymous disclosures as well as disclosures employing cryptographic methods*, and prevents access to non-authorised staff members of the competent authority;

#### **Amendment 106**

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

*Text proposed by the Commission*

*Amendment*

ca) *they guarantee free and independent advice and legal support for reporting persons and intermediaries.*

## Amendment 107

### Proposal for a directive

#### Article 7 – paragraph 2 – point c

*Text proposed by the Commission*

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

*Amendment*

- c) physical meeting with dedicated staff members of the competent authority ***accompanied, if the reporting person requests it, by a union representative, by a representative of civil society or by his/her legal representative.***

## Amendment 108

### Proposal for a directive

#### Article 7 – paragraph 4

*Text proposed by the Commission*

4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

*Amendment*

4. Member States ***and EU institutions, agencies and bodies*** shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

## Amendment 109

### Proposal for a directive

#### Article 8 – paragraph 2 – point c

*Text proposed by the Commission*

- c) maintaining contact with the reporting person for the purpose of informing ***the reporting person*** of the progress and the outcome of the investigation.

*Amendment*

- c) maintaining contact with the reporting person ***and, whenever relevant, with those persons facilitating the reporting, such as intermediaries and investigative journalists,*** for the purpose of informing ***them*** of the progress and the outcome of the investigation.

## Amendment 110

### Proposal for a directive

#### Article 9 – paragraph 1 – point a

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 111

### Proposal for a directive

#### Article 9 – paragraph 1 – point c

*Text proposed by the Commission*

c) the confidentiality regime applicable to reports, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed.

*Amendment*

c) the confidentiality regime applicable to reports **and its conditions**, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed; **the same confidentiality regime and protection measures shall be applicable to whistle blowers who initially reported anonymously, if they ask for such measures.**

## Amendment 112

### Proposal for a directive

#### Article 9 – paragraph 2

*Text proposed by the Commission*

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may **not be ensured**, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the

*Amendment*

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may **be breached**, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the

context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence *of the concerned person*, and in each case subject to appropriate safeguards under such laws.

context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence, and in each case subject to appropriate safeguards under such laws.

## Amendment 113

### Proposal for a directive

#### Article 10 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

##### *Amendment*

Member States shall ensure that competent authorities publish on their websites *in at least two official languages of the European Union* in a separate, easily identifiable and accessible section at least the following information:

##### *Justification*

*There's the possibility of the reporting person not knowing the official language of the Member State he or she resides in.*

## Amendment 114

### 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 *or intermediaries* qualify for protection under this Directive;

## Amendment 115

### Proposal for a directive

#### Article 10 – paragraph 1 – point d

##### *Text proposed by the Commission*

d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of

##### *Amendment*

d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of

personal data in accordance with Article 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EC) 45/2001, as applicable.

personal data in accordance with Article 5 **and Article** 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EC) 45/2001, as applicable.

#### Amendment 116

##### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

#### Amendment 117

##### Proposal for a directive

##### Article 11 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that competent authorities keep records of every report received.

1. Member States shall ensure that competent authorities keep records of every report received. ***The reports will be stored for no longer than is necessary and proportionate for the reporting procedure and shall be deleted as soon as this procedure is closed. The personal data contained in those reports shall be processed in accordance with the European data protection laws.***

#### Amendment 118

##### Proposal for a directive

##### Article 11 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless ***the reporting person*** explicitly

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person ***or the intermediary***, unless ***they*** explicitly

requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's *or intermediaries'* identity.

## **Amendment 119**

### **Proposal for a directive**

#### **Article 11 – paragraph 3 – subparagraph 1 – introductory part**

##### *Text proposed by the Commission*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent authority shall have the right to document the oral reporting in one of the following ways:

##### *Amendment*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person *or the intermediary*, the competent authority shall have the right to document the oral reporting in one of the following ways:

## **Amendment 120**

### **Proposal for a directive**

#### **Article 11 – paragraph 3 – subparagraph 2**

##### *Text proposed by the Commission*

The competent authority shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

##### *Amendment*

The competent authority shall offer the possibility to the reporting person *or the intermediary* to check, rectify and agree the transcript of the call by signing it.

## **Amendment 121**

### **Proposal for a directive**

#### **Article 11 – paragraph 4**

##### *Text proposed by the Commission*

4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The

##### *Amendment*

4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The

competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

competent authority shall offer the possibility to the reporting person *or the intermediary* to check, rectify and agree with the minutes of the call by signing them.

## Amendment 122

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 1 – introductory part

##### *Text proposed by the Commission*

Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the meeting in one of the following ways:

##### *Amendment*

Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person *or the intermediary*, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the meeting in one of the following ways:

## Amendment 123

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 2

##### *Text proposed by the Commission*

The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

##### *Amendment*

The competent authority shall offer the possibility to the reporting person *or the intermediary* to check, rectify and agree with the minutes of the meeting by signing them.

## Amendment 124

### Proposal for a directive

#### Article 11 – paragraph 5 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

**5a. The competent authority shall inform in every case the reporting person**



*of the circumstances described in point c) of paragraph 1 of Article 9 if they take place, and send to the reporting person a written justification for the disclosure of the confidential data. The reporting person shall be offered the possibility to check, rectify and agree that these circumstances take place.*

## Amendment 125

### Proposal for a directive Article 13 – title

*Text proposed by the Commission*

Conditions for the protection of reporting persons

*Amendment*

Conditions for the protection of reporting persons *and intermediaries*

## Amendment 126

### 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 *or the intermediary* 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, *he or she has acted in good faith* and that this information falls within the scope of this Directive.

## Amendment 127

### Proposal for a directive Article 13 – paragraph 2 – introductory part

*Text proposed by the Commission*

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

*Amendment*

2. A person reporting externally *or internally* shall qualify for protection under this Directive.

## Amendment 128

### 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 seriousness of the violation;***

## Amendment 129

### Proposal for a directive

#### Article 13 – paragraph 2 – point e

*Text proposed by the Commission*

e) he or she had reasonable grounds to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;

*Amendment*

e) he or she had reasonable grounds to believe that the use of internal reporting channels could ***result in retaliation or*** jeopardise the effectiveness of investigative actions by competent authorities ***or when use of the internal channel has previously resulted in retaliation or jeopardised the effectiveness of investigative actions by competent authorities;***

## Amendment 130

### Proposal for a directive

#### Article 13 – paragraph 3

*Text proposed by the Commission*

3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported ***externally*** in accordance with the conditions set out in paragraph 2.

*Amendment*

3. A person reporting to relevant bodies, offices, ***elected officials*** or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported in accordance with the conditions set out in paragraph ***1***).

## Amendment 131

### Proposal for a directive

#### Article 13 – paragraph 4 – introductory part

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 132

### Proposal for a directive

#### Article 13 – paragraph 4 – point a

*Text proposed by the Commission*

*Amendment*

a) ***he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or***

***deleted***

## Amendment 133

### Proposal for a directive

#### Article 13 – paragraph 4 – point b

*Text proposed by the Commission*

*Amendment*

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

***deleted***

## Amendment 134

**Proposal for a directive**  
**Article 14 – title**

*Text proposed by the Commission*

Prohibition of retaliation against reporting persons

*Amendment*

Prohibition of retaliation against reporting persons, ***investigative journalists and intermediaries***

**Amendment 135**

**Proposal for a directive**  
**Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, against reporting persons meeting the conditions set out in Article 13, including in particular in the form of:

*Amendment*

Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, against reporting persons, ***intermediaries and relatives of the reporting person*** meeting the conditions set out in Article 13, including in particular in the form of:

**Amendment 136**  
**Proposal for a directive**  
**Article 14 – paragraph 1 – point g**

*Text proposed by the Commission*

g) coercion, intimidation, harassment or ostracism ***at the workplace***;

*Amendment*

g) coercion, intimidation, ***physical and verbal violence***, harassment, ***discrimination*** or ostracism;

**Amendment 137**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point i**

*Text proposed by the Commission*

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

*Amendment*

i) failure to convert ***an internship or*** a temporary employment contract into a permanent one;

## Amendment 138

### Proposal for a directive

#### Article 14 – paragraph 1 – point k

*Text proposed by the Commission*

k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;

*Amendment*

k) damage, including to the person's reputation ***and particularly on social media***, or financial loss, including loss of business and loss of income;

## Amendment 139

### Proposal for a directive

#### Article 14 – paragraph 1 – point k a (new)

*Text proposed by the Commission*

*Amendment*

***k a) abusive legal actions and disproportionate financial claims;***

## Amendment 140

### Proposal for a directive

#### Article 14 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 14 a***

***Duty of maintaining the confidentiality of the identity of reporting persons***

***1. The identity of a reporting person may not be disclosed without the individual's explicit consent. This includes information that may be used to discover the identity of the reporting person.***

***2. Any person who learns about the data referred to in paragraph 1 of this Article shall be required to protect such data.***

***3. Circumstances under which the confidential data of a reporting person may be disclosed are limited to cases where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the***

*context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.*

*4. In the cases referred to in paragraph 3, the person designated to receive and follow-upon reports shall be required to notify the reporting person before disclosing his or her confidential data.*

*5. The internal and external reporting channels are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person, and prevents access to non-authorised staff members.*

#### **Amendment 141**

##### **Proposal for a directive Article 15 – title**

*Text proposed by the Commission*

Measures for the protection of reporting persons against retaliation

*Amendment*

Measures for the protection of reporting persons **and intermediaries** against retaliation

#### **Amendment 142**

##### **Proposal for a directive Article 15 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

*Amendment*

1. Member States shall take the necessary measures to ensure the protection of reporting persons **and intermediaries** meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

#### **Amendment 143**

**Proposal for a directive**  
**Article 15 – paragraph 2**

*Text proposed by the Commission*

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.

*Amendment*

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation ***in at least two official languages of the European Union. This independent role could be performed, for example, by civil society organisations and/or trade unions.***

**Amendment 144**

**Proposal for a directive**  
**Article 15 – paragraph 3**

*Text proposed by the Commission*

3. Reporting persons shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

*Amendment*

3. Reporting persons ***and intermediaries*** shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

**Amendment 145**

**Proposal for a directive**  
**Article 15 – paragraph 6**

*Text proposed by the Commission*

6. Reporting persons shall have access to remedial measures against retaliation as appropriate, ***including*** interim relief pending the resolution of legal proceedings, ***in accordance with the national framework.***

*Amendment*

6. Reporting persons shall have access to remedial measures against retaliation ***covering all direct, indirect, and future consequences of any detriment, including,*** as appropriate:

***a) making any provision to act taken in breach of Article 14 void;***

- b) the reinstatement of the reporting person with equal salary, status, duties and working conditions;*
- c) the transfer of the reporting person to a new department or supervisor;*
- d) compensation for pain, suffering and any economic loss linked to the retaliation;*
- e) interim relief pending the resolution of legal proceedings.

## Amendment 146

### Proposal for a directive Article 15 – paragraph 8

#### *Text proposed by the Commission*

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 Council<sup>63</sup>, 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.

---

<sup>63</sup> 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).

#### *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 Council<sup>63</sup>, and in accordance with national law, Member States may provide for further measures of legal, ***social*** and financial assistance and support for reporting persons in the framework of legal proceedings, ***including legal advice from a lawyer, trade union representative or other relevant person or body.***

---

<sup>63</sup> 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).

## Amendment 147

### Proposal for a directive Article 16 – paragraph 2 a (new)



*Text proposed by the Commission*

*Amendment*

**2a. Under no circumstances can the person accused in a report obtain information about the identity of the whistleblower. The whistleblower's confidentiality shall always be guaranteed.**

*Justification*

*Additional protection for the whistleblower.*

#### **Amendment 148**

**Proposal for a directive**

**Article 16 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. The protection of the personal data of the concerned person is essential to avoid any unfair treatment or reputational harm following the public disclosure of personal data, in particular those revealing the identity of a concerned person. Consequently, the competent authorities should, in accordance with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, establish adequate procedures of data protection, in order to protect the reporting person, the concerned person as well as any other person targeted in the reporting. The authorities shall ensure a secured system among the competent authorities to allow the access to authorised persons only.**

#### **Amendment 149**

**Proposal for a directive**

**Article 16 – paragraph 3 b (new)**

**3b.** *Any person affected by the reporting or the misleading or malicious disclosure should benefit from a legal protection, including the right to an effective remedy against an abusive reporting.*

**Amendment 150**

**Proposal for a directive  
Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 16a**

***Rights of persons implicated***

*Member States shall ensure that any findings or reports resulting from an assessment or an investigation of, or prompted by, one or more protected disclosure(s) does not unjustly prejudice any individual, whether directly or indirectly. The right to a fair hearing or trial shall be fully respected.*

**Amendment 151**

**Proposal for a directive  
Article 17 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

b) take retaliatory measures against reporting persons;

b) take retaliatory measures against reporting persons, ***also outside the work-related relation;***

**Amendment 152**

**Proposal for a directive  
Article 17 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

c) bring vexatious proceedings against

c) bring vexatious proceedings against

reporting persons;

reporting persons *or investigative journalists revealing wrongdoing*;

#### **Amendment 153**

##### **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 *or the anonymity* of the identity of reporting persons *without having obtained their consent*;

#### **Amendment 154**

##### **Proposal for a directive**

##### **Article 17 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*da) do not fulfil their obligation to follow-up on a report and/or do not provide feedback to the reporting person about such follow-up.*

#### **Amendment 155**

##### **Proposal for a directive**

##### **Article 18 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be made in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall be immediately deleted.

Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be made in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall *not be collected or, if accidentally collected, shall* be immediately deleted.

## Amendment 156

### Proposal for a directive

#### Article 20 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. When transposing this directive, Member States may consider the establishment of an independent whistleblower protection authority.**

## Amendment 157

### Proposal for a directive

#### Article 21 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The Commission shall, by 15 May 2027, taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has operated and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further areas or Union acts.

3. The Commission shall, by 15 May 2027, taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has operated, **the possible impact on fundamental rights such as privacy, the right to the presumption of innocence and the right to a fair trial**, and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further areas or Union acts.

## Amendment 158

### Proposal for a directive

#### Article 22 a (new)

*Text proposed by the Commission*

*Amendment*

**Article 22 a**

***Updating the Annexes***

***Whenever a new EU legal act falls into the material scope laid down in Article 1 (1) (a) or Article 1 (2), the Commission shall update the Annexes accordingly via a delegated act.***

**Amendment 159**

**Proposal for a directive**

**Annex I – part II – subpart C a (new)**

*Text proposed by the Commission*

*Amendment*

***C a protection of the Union's financial interests:***

***(i) Regulation (EU, EURATOM) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Protection of persons reporting on breaches of Union law						
<b>References</b>	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)						
<b>Committee responsible</b> Date announced in plenary	JURI 28.5.2018						
<b>Opinion by</b> Date announced in plenary	LIBE 28.5.2018						
<b>Associated committees - date announced in plenary</b>	13.9.2018						
<b>Rapporteur</b> Date appointed	Maite Pagazaurtundúa Ruiz 25.6.2018						
<b>Discussed in committee</b>	3.9.2018						
<b>Date adopted</b>	5.11.2018						
<b>Result of final vote</b>	<table> <tr> <td>+:                   </td><td>26</td></tr> <tr> <td>–:                   </td><td>8</td></tr> <tr> <td>0:                   </td><td>4</td></tr> </table>	+:	26	–:	8	0:	4
+:	26						
–:	8						
0:	4						
<b>Members present for the final vote</b>	Heinz K. Becker, Monika Beňová, Michał Boni, Caterina Chinnici, Frank Engel, Cornelia Ernst, Laura Ferrara, Ana Gomes, Monika Hohlmeier, Sophia in 't Veld, Eva Joly, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, Ivari Padar, Judith Sargentini, Giancarlo Scottà, Birgit Sippel, Csaba Sógor, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Marie-Christine Vergiat, Josef Weidenholzer, Kristina Winberg, Auke Zijlstra						
<b>Substitutes present for the final vote</b>	Carlos Coelho, Pál Csáky, Sylvia-Yvonne Kaufmann, Jeroen Lenaers, Maite Pagazaurtundúa Ruiz, Morten Helveg Petersen, Barbara Spinelli						
<b>Substitutes under Rule 200(2) present for the final vote</b>	Rupert Matthews, Martina Michels						

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

26	+
ALDE	Sophia in 't Veld, Maite Pagazaurtundúa Ruiz, Morten Helveg Petersen
EFDD	Laura Ferrara
GUE/NGL	Cornelia Ernst, Martina Michels, Barbara Spinelli, Marie-Christine Vergiat
PPE	Michał Boni, Barbara Kudrycka, Roberta Metsola, Csaba Sógor
S&D	Monika Beňová, Caterina Chinnici, Ana Gomes, Sylvia-Yvonne Kaufmann, Dietmar Köster, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Claude Moraes, Ivari Padar, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
VERTS/ALE	Eva Joly, Judith Sargentini

8	-
ECR	Rupert Matthews, Helga Stevens, Kristina Winberg
ENF	Giancarlo Scottà, Auke Zijlstra
PPE	Pál Csáky, Frank Engel, Traian Ungureanu

4	0
PPE	Heinz K. Becker, Carlos Coelho, Monika Hohlmeier, Jeroen Lenaers

### Key to symbols:

+ : in favour

- : against

0 : abstention

5.10.2018

## OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

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: Dennis de Jong

### AMENDMENTS

#### Amendment 1

##### 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 threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in ***preventing, detecting and disclosing irregularities, fraud, corruption and other wrongdoing or*** breaches of law ***both in the public and the private sectors***. However, potential whistle-blowers are often discouraged from reporting their concerns or suspicions for fear of retaliation ***or of being accused of unlawful acquisition, use or disclosure of trade secrets as defined in Directive (EU)2016/943 of the European Parliament and of the Council*** <sup>1a</sup>. ***The***



*purpose of this Directive is to create a climate of trust that enables whistle-blowers to report their concerns or suspicions.*

---

*<sup>1a</sup> 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 disclosure (OJ L 157, 15.6.2016, p. 1).*

## **Amendment 2**

### **Proposal for a directive Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*(1a) The Whistle-blowers' protection is an important matter to the Parliament that has approved the resolution of 14 February 2017 on the role of whistle-blowers in the protection of EU's financial interests (2016/2055(INI)) and the resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).*

## **Amendment 3**

### **Proposal for a directive Recital 2**

*Text proposed by the Commission*

*Amendment*

(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

(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.

prosecution of breaches of Union law, ***thus enhancing transparency and accountability.***

#### Amendment 4

##### 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) Breaches of Union law may cause serious harm to the public interest, in the sense of creating significant risks for the welfare of society. ***As*** whistleblowers are ***usually*** in a privileged position to disclose ***such*** breaches, ***and have the courage to report or disclose information in defence of the public interest, notwithstanding any personal and professional risk***, it is necessary to enhance enforcement ***of Union law*** by ensuring effective protection of whistleblowers from retaliation and introducing effective, ***independent*** reporting channels.

#### Amendment 5

##### Proposal for a directive Recital 4

###### *Text proposed by the Commission*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. The consequences of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and the Union as a whole.

###### *Amendment*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and ***Union institutions, agencies and bodies and is also*** uneven across policy areas. The consequences of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and the Union as a whole.

## Amendment 6

### Proposal for a directive

#### Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

**(4 a) Article 33 of the UN Convention against Corruption, to which the Union and its Member States are parties, clearly stipulates the need for appropriate legal measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with that Convention;**

## Amendment 7

### Proposal for a directive

#### Recital 5

*Text proposed by the Commission*

*Amendment*

(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.

(5) Accordingly, common minimum standards ensuring effective whistleblower protection **with a global and comprehensive approach**, should apply in those acts and **with particular emphasis on** 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 8

### Proposal for a directive

#### Recital 16

*Text proposed by the Commission*

*Amendment*

(16) The protection of the financial interests of the Union, which relates to the

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

fight against fraud, corruption, *the violation of legal obligations, the 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 action. Whistleblower protection is necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.

## Amendment 9

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, *consideration* should be *given to whether to amend* the Annex to the present Directive in order to place it under its scope.

#### *Amendment*

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, *it* should be *added to* the Annex to the present Directive in order to place it under its scope.

## Amendment 10

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

(20) This Directive *should be without prejudice* to the protection afforded to

#### *Amendment*

(20) This Directive *is a complement* to the protection afforded to employees when

employees when reporting on breaches of Union employment law. In particular, in the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

reporting on breaches of Union employment law. In particular, in the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.

## Amendment 11

### 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, ***particularly*** about threats or harm to the public interest, 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 ***freedom of information as well as*** media freedom and pluralism.

## Amendment 12

### 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***

#### *Amendment*

(24) Persons need specific legal protection where they acquire the information ***and their decision to*** report ***it***

***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.***

***results in a risk of work-related or other retaliation (for instance, for breaching the duty of confidentiality or loyalty or Union legislation on trade secrets). The underlying reason for providing them with protection is their position of economic vulnerability vis-à-vis the person on whom they are reporting or on whom they de facto depend for work.***

## Amendment 13

### Proposal for a directive Recital 25

#### *Text proposed by the Commission*

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

#### *Amendment*

(25) Effective enforcement of Union law requires that protection is granted to the broadest possible range of categories of persons, who, irrespective of whether they are EU citizens or third-country nationals, have access to information about breaches that would be in the public's interest to report, ***including about activities of Union institutions inside and outside the Union,*** and who may suffer retaliation if they report them. Member States should ensure that the need for protection is determined by reference to all the relevant circumstances, so as to cover ***all*** persons connected to the ***report.***

## Amendment 14

### Proposal for a directive Recital 26

(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 Union<sup>52</sup>, 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.

(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 Union<sup>52</sup>, 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, ***interns***, 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.

---

<sup>52</sup> 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.

---

<sup>52</sup> 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.

## **Amendment 15**

### **Proposal for a directive Recital 27**

(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

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

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

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 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 16

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their

#### *Amendment*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches ***or for directly or indirectly supporting whistleblowers' reporting.*** Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a



reputation.

negative reference for future employment or otherwise damaging their reputation.

***Retaliation against investigators or reporters could take the form of strategic litigation suits, for example regarding libel or defamation.***

## Amendment 17

### Proposal for a directive

#### Recital 30

*Text proposed by the Commission*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. ***At the same time, protection should not apply to the reporting of information which is already in the public domain or of unsubstantiated rumours and hearsay.***

*Amendment*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. ***Protection should be given to individuals working at institutions within the Union, but also to individuals working in European entities located outside Union territory. It should also apply to officials as well as other employees and interns working at the institutions, agencies and bodies of the Union.***

## Amendment 18

### 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,

*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.

encompassing any act or omission which  
causes them detriment.

## Amendment 19

### 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. ***Therefore, it is essential to create a safe environment,*** providing ***whistleblowers and the media*** with effective protection from retaliation. In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies. ***In this context also, investigative journalists who use whistleblower sources should themselves be given the same protection as their whistleblower sources.***

## Amendment 20

### Proposal for a directive Recital 33 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(33 a) In accordance with Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC), (‘the Staff Regulations’) <sup>1a</sup>, all Union institutions are required to adopt and implement internal rules protecting whistleblowers.***

---

***<sup>1a</sup> 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***

## Amendment 21

### 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 also guarantee the highest possible level 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 ***be independent and 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. ***It is imperative that they be provided with sufficient budgetary resources.***

## Amendment 22

### Proposal for a directive Recital 34 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(34 a) In addition to the competent authorities identified by Member States, there is also a need to establish an independent information-gathering, advisory and referral Union body, which is in a position to receive reports of irregularities, with sufficient budgetary resources, adequate competences and***

*appropriate specialists, in order to help internal and external whistleblowers in using the right channels to disclose their information on possible breaches of Union law, while protecting the confidentiality of such whistleblowers and offering them the support and advice they need. The European Ombudsman has already offered to accommodate such a body.*

## Amendment 23

### Proposal for a directive Recital 37

#### *Text proposed by the Commission*

(37) For the effective detection and prevention of breaches of Union law it ***is vital that*** the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

#### *Amendment*

(37) For the effective detection and prevention of breaches of Union law it ***can be beneficial when*** the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

## Amendment 24

### Proposal for a directive Recital 40

#### *Text proposed by the Commission*

(40) ***It should be clear that, in the case of private legal entities which do not provide for internal reporting channels,*** reporting persons should ***be able to report*** directly externally to the competent authorities and such persons should enjoy the protection against retaliation provided by this Directive.

#### *Amendment*

(40) Reporting persons should ***always have the option of reporting*** directly externally to the competent authorities and such persons should enjoy the protection against retaliation provided by this Directive.

## Amendment 25

### Proposal for a directive

## Recital 42

### *Text proposed by the Commission*

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

### *Amendment*

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

## Amendment 26

### Proposal for a directive

#### Recital 43

### *Text proposed by the Commission*

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

### *Amendment*

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

## Amendment 27

### Proposal for a directive

#### Recital 44

### *Text proposed by the Commission*

(44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality reports by the employees of the entity and of its subsidiaries or

### *Amendment*

(44) Internal reporting procedures should enable private ***and public*** legal entities to receive and investigate in full confidentiality ***and with respect of anonymity if appropriate*** reports by the

affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

## Amendment 28

### Proposal for a directive Recital 45

#### *Text proposed by the Commission*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest and independence. ***In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.***

## Amendment 29

### Proposal for a directive Recital 47

#### *Text proposed by the Commission*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable

#### *Amendment*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest and independence. ***For these subjects, a civil liability regime should be provided in case of wilful misconduct or gross negligence.***

#### *Amendment*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. ***To this end, they should be able to consult and seek advice from the national competent authority and the Union referral body.*** Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as

and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

on procedures to report externally to relevant competent authorities. ***They should also provide information on rights guaranteed to whistleblowers, particularly their right to disclosure provided for in this Directive, and their right to turn to civil society organisations involved in whistleblower protection to this end, specifically those that provide strategic and legal advice to whistleblowers, as well as to journalists.*** Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

## **Amendment 30**

### **Proposal for a directive Recital 48 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 31**

**Proposal for a directive**  
**Recital 49**

*Text proposed by the Commission*

(49) Lack of confidence in the **usefulness** of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.

**Amendment 32**

**Proposal for a directive**  
**Recital 51**

*Text proposed by the Commission*

(51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to relevant bodies, offices or agencies of the Union, including, for the purposes of this Directive, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor Office (EPPO), without prejudice to the possibility for the reporting person to refer directly to such bodies, offices or agencies of the Union.

**Amendment 33**

**Proposal for a directive**  
**Recital 55**

*Amendment*

(49) ***Along with the very real and very reasonable fear of retaliation,*** lack of confidence in the ***effectiveness*** of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.

*Amendment*

(51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to relevant bodies, offices or agencies of the Union, including, for the purposes of this Directive, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor Office (EPPO), without prejudice to the possibility for the reporting person to refer directly to such bodies, offices or agencies of the Union ***as well as to the Union referral body.***



*Text proposed by the Commission*

(55) Member States should ensure that competent authorities have in place adequate protection procedures for the processing of reports of infringements and for the protection of the personal data of the persons referred to in the report. Such procedures should ensure that the identity of every reporting person, concerned person, and third persons referred to in the report (e.g. witnesses or colleagues) is protected at all stages of the procedure. This obligation should be without prejudice to the necessity and proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the concerned person.

*Amendment*

(55) Member States should ensure that competent authorities have in place adequate protection procedures for the processing of reports of infringements and for the protection of the personal data of the persons referred to in the report. Such procedures ***should also be established for the Union referral body and*** should ensure that the identity of every reporting person, concerned person, and third persons referred to in the report (e.g. witnesses or colleagues) is protected at all stages of the procedure. This obligation should be without prejudice to the necessity and proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the concerned person.

**Amendment 34**

**Proposal for a directive  
Recital 56**

*Text proposed by the Commission*

(56) It is necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information provided by a reporting person to the competent authority comply with the duty of professional secrecy and the confidentiality when transmitting the data both inside and outside of the competent authority, including where a competent authority opens an investigation or an inquiry or subsequent enforcement activities in connection with the report of infringements.

*Amendment*

(56) It is necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information provided by a reporting person to the competent authority comply with the duty of professional secrecy and the confidentiality when transmitting the data both inside and outside of the competent authority, including where a competent authority opens an investigation or an inquiry or subsequent enforcement activities in connection with the report of infringements. ***The same necessity exists for staff members of the Union referral***

*body.*

## Amendment 35

### 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 the privacy of the reporter.***

## Amendment 36

### Proposal for a directive Recital 58

#### *Text proposed by the Commission*

(58) Protection of personal data of the reporting and concerned person is crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the report that should include a secure system within the competent authority with restricted access rights for authorised staff only.

#### *Amendment*

(58) Protection of personal data of the reporting and concerned person, ***as well as of the report itself*** is crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities ***and relevant bodies, offices or agencies of the Union, as well as the Union referral body*** should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the report that should include a secure system within the competent

authority with restricted access rights for authorised staff only.

## Amendment 37

### Proposal for a directive

#### Recital 59

*Text proposed by the Commission*

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them should guarantee that those procedures are adequate and thus serving their purpose.

*Amendment*

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them ***and competent civil society organisations*** should guarantee that those procedures are adequate and thus serving their purpose.

## Amendment 38

### Proposal for a directive

#### Recital 61

*Text proposed by the Commission*

(61) ***The requirement of a tiered use of reporting channels, as a general rule, is necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case. Moreover, it is*** necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the

*Amendment*

(61) It is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights<sup>57</sup>.

---

<sup>57</sup> One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure; see, for instance, *Guja v. Moldova* [GC], no 14277/04, ECHR 2008.

---

<sup>57</sup> One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure; see, for instance, *Guja v. Moldova* [GC], no 14277/04, ECHR 2008.

## Amendment 39

### Proposal for a directive Recital 62

#### *Text proposed by the Commission*

(62) *As a rule, reporting* persons should first use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) ***or that their use is not mandatory (which may be the case for persons who are not in an employment relationship)***, or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry).

#### *Amendment*

(62) ***Reporting*** persons should ***be able to*** first use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry), ***or that the reporting persons fear that the use of such channels exposes them to the risk of retaliation or might otherwise hinder the reporting.***

## Amendment 40

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

**Amendment 41**

**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

*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; ***where they believe the internal channels lack independence***; 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. ***If internal channels are unavailable or do not function properly, or if reporting persons choose not to use such channels***, persons reporting externally to the competent authorities, ***the Union referral body*** and, where relevant, to ***other*** bodies, offices or agencies of the Union shall be ***equally*** protected.

*Amendment*

(65) Reporting persons ***and those facilitating the reporting, such as intermediaries and investigative journalists*** should be protected against any form of retaliation, whether direct or

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.

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 representatives ***of those*** who have provided support to the reporting person.

## Amendment 42

### Proposal for a directive Recital 66

#### *Text proposed by the Commission*

(66) Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear prohibition of retaliation in law has an important dissuasive effect, ***further*** strengthened by provisions for personal liability and penalties for the perpetrators of retaliation.

#### *Amendment*

(66) Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear prohibition of retaliation in law has an important dissuasive effect, ***and must be*** strengthened by provisions for personal liability and penalties for the perpetrators of retaliation, ***and for those in management positions who facilitate and/or ignore such retaliation;***

## Amendment 43

### Proposal for a directive Recital 67

#### *Text proposed by the Commission*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, ***in a responsible manner*** and that breaches and wrongdoings are detected in a timely manner or even prevented.

## Amendment 44

### 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

#### *Amendment*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States ***and relevant bodies, offices or agencies of the Union, as well as the Union referral body*** should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public ***and support the work of CSOs providing this information***. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice ***anonymously*** can help ensure that reports are made through the appropriate ***safe and confidential*** channels and that breaches and wrongdoings are detected in a timely manner or even prevented.

#### *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 ***persons*** 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 45**

##### **Proposal for a directive Recital 70**

###### *Text proposed by the Commission*

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

#### **Amendment 46**

##### **Proposal for a directive Recital 74**

###### *Text proposed by the Commission*

(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council<sup>58</sup> ***exempts reporting persons*** from the civil redress measures, procedures and remedies ***it*** provides for, ***in case the***

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*

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting ***or disclosure*** and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

###### *Amendment*

(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. ***The protection of whistleblowers provided for in this Directive should prevail over*** Directive (EU) 2016/943 of the European Parliament and of the Council<sup>58</sup> ***and therefore***



***alleged acquisition, use or disclosure of the trade secret was carried out for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest.***

Also in other proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence. In such cases, the person initiating the proceedings should carry the burden to prove any intent on the part of the reporting person to violate the law.

***whistleblowers meeting the requirements of this Directive should be exempted*** from the civil redress measures, procedures and remedies ***provided for in Directive (EU) 2016/943*** provides for. Also in other proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence. In such cases, the person initiating the proceedings should carry the burden to prove any intent on the part of the reporting person to violate the law.

---

<sup>58</sup> 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 disclosure (OJ L 157, 15.6.2016, p. 1).

---

<sup>58</sup> 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 disclosure (OJ L 157, 15.6.2016, p. 1).

## **Amendment 47**

### **Proposal for a directive Recital 75**

#### *Text proposed by the Commission*

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need ***might be key, in certain cases***, for the effective enforcement of their rights to protection.

#### *Amendment*

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need ***is key*** for the effective enforcement of their rights to protection.

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

## Amendment 48

### Proposal for a directive Recital 78

#### *Text proposed by the Commission*

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. ***Penalties against persons who make a report or disclosure demonstrated to be knowingly false are necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.***

#### *Amendment*

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions.

## Amendment 49

### Proposal for a directive Recital 84

#### *Text proposed by the Commission*

(84) The objective of this Directive, namely to strengthen enforcement ***in certain policy areas and acts*** where breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on

#### *Amendment*

(84) The objective of this Directive, namely to strengthen enforcement where breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only

whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

## Amendment 50

### Proposal for a directive

#### Article 1 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

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

##### *Amendment*

1. With a view to enhancing the enforcement of Union law and policies this Directive lays down common minimum standards for the protection of persons reporting, *as well as for those facilitating the reporting, such as intermediaries and investigative journalists*, on the following unlawful activities or abuse of law:

## Amendment 51

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – point ii

##### *Text proposed by the Commission*

(ii) financial services, prevention of money laundering *and* terrorist financing;

##### *Amendment*

(ii) financial services, prevention of money laundering, terrorist financing *corruption and financing of organized crime*;

## Amendment 52

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – point viii

##### *Text proposed by the Commission*

(viii) public health;

##### *Amendment*

(viii) public health *or public safety*;

## Amendment 53

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – point x a (new)

*Text proposed by the Commission*

*Amendment*

**(xa) employment and working conditions;**

## Amendment 54

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – point x b (new)

*Text proposed by the Commission*

*Amendment*

**(xb) tax fraud, tax evasion and tax optimisation;**

## Amendment 55

### Proposal for a directive

#### Article 1 – paragraph 1 – point a – point x c (new)

*Text proposed by the Commission*

*Amendment*

**(xc) violations of human rights or of the rights enshrined in the European Charter of Fundamental Rights;**

## Amendment 56

### 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, **particularly** 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.

## Amendment 57

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

*Text proposed by the Commission*

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.

*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. ***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 58**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 59**

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

*Text proposed by the Commission*

*Amendment*

***(da) This Directive shall also apply to Union staff members, as defined within the Union Staff Regulation;***

**Amendment 60**

**Proposal for a directive**  
**Article 2 – paragraph 2**

*Text proposed by the Commission*

2. This Directive shall also apply to reporting persons whose work-based

*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.

relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other pre-contractual negotiation, ***or even to reporting persons whose employment relationship is terminated.***

#### **Amendment 61**

##### **Proposal for a directive Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. This Directive shall also apply to those facilitating reporting, such as intermediaries and investigative journalists.**

#### **Amendment 62**

##### **Proposal for a directive Article 2 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2b. This Directive shall also apply to legal and natural person associated with a reporting person if such person makes probable that he or she suffered a detriment due to his or her connection to a reporting person.**

#### **Amendment 63**

##### **Proposal for a directive Article 2 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

**2c. This Directive shall also apply to legal and natural person who makes probable that he or she suffered a detriment due to the fact that he or she was believed to be a reporting person or an associated person.**

## Amendment 64

### Proposal for a directive

#### Article 3 – paragraph 1 – point 5

##### *Text proposed by the Commission*

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur ***in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work;***

##### *Amendment*

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur;

## Amendment 65

### Proposal for a directive

#### Article 3 – paragraph 1 – point 9

##### *Text proposed by the Commission*

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

##### *Amendment*

(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches;

## Amendment 66

### Proposal for a directive

#### Article 3 – paragraph 1 – point 10

##### *Text proposed by the Commission*

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

##### *Amendment*

(10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches.

## Amendment 67

### Proposal for a directive

#### Article 3 – paragraph 1 – point 11

*Text proposed by the Commission*

(11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is associated;

*Amendment*

(11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is ***or has been*** associated;

**Amendment 68**

**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 or external reporting ***or disclosure*** which causes or may cause unjustified detriment to the reporting person, ***to his or her colleagues, relatives and to persons facilitating the reporting, such as intermediaries and investigative journalists, even after the termination of the employment relationship;***

**Amendment 69**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 14**

*Text proposed by the Commission*

(14) ‘competent authority’ means any ***national*** authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

*Amendment*

(14) ‘competent authority’ means any authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

**Amendment 70**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 14 a (new)**



**(14 a) ‘Union referral body’ means an independent European information-gathering, advisory and referral body, which is in a position to receive reports in accordance with Chapter III, and to help internal and external whistleblowers in using the right channels to report and disclose their information on possible breaches of Union law, while protecting the confidentiality of such whistleblowers and offering them the support and advice they need.**

## Amendment 71

### Proposal for a directive Article 4 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, *if appropriate*.

*Amendment*

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, **and protecting reporting persons**, following consultations with social partners **and civil society organisations**. **As laid down in Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC), the obligation to establish channels and procedures for reporting and following up on reports shall apply also to European Union institutions, agencies and bodies.**

## Amendment 72

### Proposal for a directive Article 4 – paragraph 2

*Text proposed by the Commission*

2. Such channels and procedures shall allow for reporting by employees of the entity. They *may* allow for reporting by

*Amendment*

2. Such channels and procedures shall allow for reporting by employees of the entity. They **shall** allow for reporting by

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

#### **Amendment 73**

##### **Proposal for a directive**

##### **Article 4 – paragraph 3 – point c a (new)**

*Text proposed by the Commission*

other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d).

*Amendment*

***(ca) private legal entities of any size whose conducted activities are likely to constitute a danger to the environment or to public health.***

#### **Amendment 74**

##### **Proposal for a directive**

##### **Article 4 – paragraph 6 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

#### **Amendment 75**

##### **Proposal for a directive**

##### **Article 4 – paragraph 6 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) Union institutions, agencies and bodies.***

#### **Amendment 76**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) channels for receiving the reports

(a) ***independent*** channels for receiving

which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised *staff members*;

the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised *persons*;

#### **Amendment 77**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the designation of a person or department competent for following up on the reports;

*Amendment*

(b) the designation of a *specifically trained* person or department competent for following up on the reports;

#### **Amendment 78**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

*Amendment*

(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union *and to the Union referral body*.

#### **Amendment 79**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) the prompt acknowledgement of receipt of written reports to the postal or electronic address indicated by the reporting person*

#### **Amendment 80**

##### **Proposal for a directive**

##### **Article 5 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded; ***in case the phone conversation is recorded, the prior consent of the reporting person is necessary;***

**Amendment 81**

**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 ***accompanied, if the reporting person requests it, by a union representative, by a representative of civil society or his/her legal representative.***

**Amendment 82**

**Proposal for a directive**

**Article 5 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 83**

**Proposal for a directive**

**Article 6 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall designate the authorities competent to receive and handle reports.

**Amendment 84**

**Proposal for a directive**

**Article 6 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

1. Member States shall designate ***or set up*** the authorities competent to receive and handle reports.

**Amendment 85**

**Proposal for a directive**

**Article 6 – paragraph 2 – point b**

*Text proposed by the Commission*

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

*Amendment*

- (b) ***acknowledge receipt of the report within 5 working days***, give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding ***two*** months;

**Amendment 86**

**Proposal for a directive**

**Article 6 – paragraph 4**

*Text proposed by the Commission*

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.

*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. ***Member States shall ensure that competent authorities receiving reports they do not have competence to address have clear***

*procedures for handling all disclosed information securely with due regard to confidentiality.*

**Amendment 87**

**Proposal for a directive**

**Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 6 a**

**Union referral body**

- 1. The Commission shall set up an independent European authority responsible for receiving and handling reports at Union level, and for guaranteeing the protection of whistleblowers. That authority shall be called the Union referral body and shall be associated with the Office of the European Ombudsman.**
- 2. The Union Referral body may be consulted directly by:**
  - a) staff members of the Union and the European Atomic Energy Community reporting information on breaches and those who facilitate the reporting by such staff members, such as intermediaries and investigative journalists;**
  - b) persons reporting information on any breaches involving Union institutions agencies or bodies, as well as those facilitating the reporting by such persons, such as intermediaries and investigative journalists;**
  - c) competent authorities.**
- 3. The Union referral body shall:**
  - a) provide advice and legal support for reporting persons and those facilitating the reporting, such as intermediaries and investigative journalists;**
  - b) establish an independent, autonomous, secure and confidential**

*reporting channel for receiving and handling information provided by reporting persons;*

*c) inform reporting persons of any follow up on the report in a reasonable timeframe not exceeding three months or six months in duly justified cases;*

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

#### **Amendment 88**

##### **Proposal for a directive**

##### **Article 7 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) they guarantee free and independent advice and legal support for reporting persons and intermediaries.*

#### **Amendment 89**

##### **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 *accompanied, if the reporting person requests it, by a union representative by a representative of civil society or his/her legal representative.*

#### **Amendment 90**

##### **Proposal for a directive**

##### **Article 7 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who

4. Member States *and Union bodies* shall establish procedures to ensure that, where a report being initially addressed to

has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

## Amendment 91

### 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 92

### Proposal for a directive Article 8 – paragraph 2 – point a

#### *Text proposed by the Commission*

a) providing any interested person with information on the procedures for reporting;

## Amendment 93

### Proposal for a directive Article 8 – paragraph 2 – point c

#### *Text proposed by the Commission*

c) maintaining contact with the reporting person for the purpose of informing **the reporting person** of the progress and the outcome of the investigation.

a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

#### *Amendment*

1. Member States **and the Commission** shall ensure that competent authorities **and the Union referral body** have **an adequate number of competent** staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.

#### *Amendment*

a) providing any interested person with information on the procedures for reporting **and on the protection to which he or she is entitled under this Directive**;

#### *Amendment*

c) maintaining contact with the reporting person **and, whenever relevant, those facilitating the reporting, such as intermediaries and investigative journalists**, for the purpose of informing **them** of the progress and the outcome of the investigation.



## Amendment 94

### Proposal for a directive

#### Article 9 – paragraph 1 – point b

##### *Text proposed by the Commission*

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

##### *Amendment*

b) a reasonable timeframe, not exceeding three months or six months in duly justified cases, for giving feed-back to the reporting person ***and, whenever relevant, to those facilitating the reporting, such as intermediaries and investigative journalists,*** about the follow-up of the report and the type and content of this feed-back;

## Amendment 95

### Proposal for a directive

#### Article 10 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

##### *Amendment*

Member States ***and the Commission*** shall ensure that competent authorities ***and the Union referral body*** publish on their websites in a separate, easily identifiable and accessible section at least the following information:

## Amendment 96

### Proposal for a directive

#### Article 11 – paragraph 1

##### *Text proposed by the Commission*

1. Member States shall ensure that competent authorities keep records of every report received.

##### *Amendment*

1. Member States ***and the Commission*** shall ensure that competent authorities ***and the Union referral body*** keep records of every report received.

## Amendment 97

### Proposal for a directive

#### Article 11 – paragraph 2

*Text proposed by the Commission*

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

*Amendment*

2. Competent authorities **and the Union referral body** shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority **or Union referral body** reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

**Amendment 98**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent authority shall have the right to document the oral reporting in one of the following ways:

*Amendment*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person **and on condition that the necessary confidentiality is maintained**, the competent authority **and Union referral body** shall have the right to document the oral reporting in one of the following ways:

**Amendment 99**

**Proposal for a directive**

**Article 11 – paragraph 4**

*Text proposed by the Commission*

4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

*Amendment*

4. Where an unrecorded telephone line is used for reporting, the competent authority **or Union referral body** shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing

them.

## Amendment 100

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 1 – introductory part

##### *Text proposed by the Commission*

Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the meeting in one of the following ways:

##### *Amendment*

Where a person requests a meeting with the dedicated staff members of the competent authority ***or of the Union referral body*** for reporting according to Article 7(2)(c), competent authorities ***and the Union referral body*** shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the meeting in one of the following ways:

## Amendment 101

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 2

##### *Text proposed by the Commission*

The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

##### *Amendment*

The competent authority ***and the Union referral body*** shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

## Amendment 102

### Proposal for a directive

#### Article 12 – title

##### *Text proposed by the Commission*

Review of the procedures by competent authorities

##### *Amendment*

Review of the procedures by competent authorities ***and the Union referral body***

## Amendment 103

### Proposal for a directive Article 12 – paragraph 1

#### *Text proposed by the Commission*

Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly.

#### *Amendment*

Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly. ***Similarly, the Commission shall review the functioning of the Union referral body regularly, and at least once every two years.***

## Amendment 104

### Proposal for a directive Article 13 – title

#### *Text proposed by the Commission*

Conditions for the protection of reporting persons

#### *Amendment*

Conditions for the protection of reporting persons ***and those facilitating the reporting***

## Amendment 105

### 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 ***or a person facilitating the reporting*** 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 106**

### **Proposal for a directive Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

**a) he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;**

**b) internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;**

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

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

**e) he or she had reasonable grounds to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;**

**f) he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.**

## **Amendment 107**

### **Proposal for a directive Article 13 – paragraph 3**

*Text proposed by the Commission*

3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported externally in accordance with the conditions set out in paragraph 2.

*Amendment*

3. A person reporting to relevant bodies, offices or agencies of the Union ***or to the Union referral body*** on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported externally in accordance with the conditions set out in paragraph ***1***.

**Amendment 108**

**Proposal for a directive**

**Article 13 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. A person making a report or a disclosure anonymously and who subsequently has been identified shall qualify for protection as laid down in this Directive under the same conditions as a person who identified themselves when making a report or a disclosure.***

**Amendment 109**

**Proposal for a directive**

**Article 14 – title**

*Text proposed by the Commission*

*Amendment*

Prohibition of retaliation against reporting persons

Prohibition of retaliation against reporting persons ***and those facilitating the reporting***

**Amendment 110**

**Proposal for a directive**

**Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect,

Member States ***and the Commission*** shall take the necessary measures to prohibit any form of retaliation, whether direct or

against reporting persons meeting the conditions set out in Article 13, including in particular in the form of:

indirect, against reporting persons, *their relatives and those facilitating the reporting, such as intermediaries and investigative journalists*, meeting the conditions set out in Article 13, including in particular in the form of:

## **Amendment 111**

### **Proposal for a directive Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 14a**

##### ***Duty of maintaining the confidentiality of the identity of reporting persons***

- 1. The identity of a reporting person may not be disclosed without the individual's explicit consent. This includes information that may be used to discover the identity of the reporting person.***
- 2. Any person who learns about the data referred to in paragraph 1 of this Article shall be required to protect such data.***
- 3. Circumstances under which the confidential data of a reporting person may be disclosed are limited to cases where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.***
- 4. In the cases referred to in paragraph 3, the person designated to receive and follow-upon reports shall be required to notify the reporting person before disclosing his or her confidential data.***
- 5. The internal and external***

*reporting channels are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person, and prevents access to non-authorised staff members.*

#### **Amendment 112**

##### **Proposal for a directive Article 15 – title**

*Text proposed by the Commission*

Measures for the protection of reporting persons against retaliation

*Amendment*

Measures for the protection of reporting persons *and those facilitating the reporting* against retaliation

#### **Amendment 113**

##### **Proposal for a directive Article 15 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

*Amendment*

1. Member States *and the Commission* shall take the necessary measures to ensure the protection of reporting persons *and those facilitating the reporting* meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

#### **Amendment 114**

##### **Proposal for a directive Article 15 – paragraph 2**

*Text proposed by the Commission*

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.

*Amendment*

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation. *This role should be independent and could be performed by civil society organisations and/or trade unions.*



## Amendment 115

### Proposal for a directive Article 15 – paragraph 3

#### *Text proposed by the Commission*

3. Reporting persons shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

#### *Amendment*

3. Reporting persons ***and those facilitating the reporting*** shall have access to effective assistance from competent authorities ***and the Union referral body*** before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

## Amendment 116

### Proposal for a directive Article 15 – paragraph 4

#### *Text proposed by the Commission*

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.

#### *Amendment*

4. Persons reporting externally to competent authorities ***or the Union referral body*** 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.

## Amendment 117

### Proposal for a directive Article 15 – paragraph 6

#### *Text proposed by the Commission*

6. Reporting persons shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the

#### *Amendment*

6. Reporting persons ***and those facilitating the reporting*** shall have access to remedial measures against retaliation ***covering all direct, indirect, and future consequences of any detriment, including,***

national framework.

as appropriate,

(a) *making any provision to act taken in breach of Article 14 void;*

(b) *the reinstatement of the reporting person with equal salary, status, duties and working conditions;*

(c) *the transfer of the reporting person to a new department or supervisor;*

(d) *compensation for pain and suffering;*

(e) *interim relief pending the resolution of legal proceedings.*

## Amendment 118

### Proposal for a directive Article 15 – paragraph 7

#### *Text proposed by the Commission*

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.

#### *Amendment*

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal. ***The reporting persons shall benefit from the best protective measures in Member States where the entity in question, or the group of which it is a subsidiary, are located wherever relevant.***

## Amendment 119

### Proposal for a directive Article 15 – paragraph 8

#### *Text proposed by the Commission*

8. In addition to providing legal aid to reporting persons in criminal and in cross-border civil proceedings in accordance

#### *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 Council<sup>63</sup>, 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.

---

<sup>63</sup> 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).

with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council<sup>63</sup>, and in accordance with national law, Member States **and the Commission** may provide for further measures of legal and financial assistance and support for reporting persons in the framework of legal proceedings.

---

<sup>63</sup> 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).

## **Amendment 120**

### **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 of persons facilitating the reporting**.

## **Amendment 121**

### **Proposal for a directive Article 17 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

**(da) do not fulfil their obligation to follow-up on a report;**

## **Amendment 122**

### **Proposal for a directive Article 17 – paragraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

**(db) do not fulfil their obligation to provide feedback to the reporting person about the follow-up on the report.**

## **Amendment 123**

### **Proposal for a directive Article 17 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons making malicious or abusive reports or disclosures, including measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures.**

*deleted*

## **Amendment 124**

### **Proposal for a directive Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 17a**

##### **No Waiver of Rights and Remedies**

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

## **Amendment 125**

### **Proposal for a directive Article 22 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 22a**

##### **Updating the Annexes**

***Whenever a new Union legal act falls into the material scope laid down in Article 1 (1) (a) or Article 1 (2), the Commission shall update the Annexes accordingly by***

*means of a delegated act.*

**Amendment 126**

**Proposal for a directive**

**Annex I – part II – subpart C a (new)**

*Text proposed by the Commission*

*Amendment*

***Ca D.– protection of the Union’s  
financial interests;***

***(i) Regulation (EU, EURATOM) No  
1023/2013 of the European Parliament  
and of the Council of 22 October 2013  
amending the Staff Regulations of  
Officials of the European Union and the  
Conditions of Employment of Other  
Servants of the European Union***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Protection of persons reporting on breaches of Union law
<b>References</b>	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 28.5.2018
<b>Opinion by</b> Date announced in plenary	CONT 28.5.2018
<b>Rapporteur</b> Date appointed	Dennis de Jong 3.5.2018
<b>Date adopted</b>	27.9.2018
<b>Result of final vote</b>	+: 16 –: 1 0: 4
<b>Members present for the final vote</b>	Inés Ayala Sender, Jonathan Bullock, Tamás Deutsch, Luke Ming Flanagan, Ingeborg Gräßle, Cătălin Sorin Ivan, Wolf Klinz, Arndt Kohn, Bogusław Liberadzki, Monica Macovei, Gilles Pargneaux, Georgi Pirinski, José Ignacio Salafranca Sánchez-Neyra, Claudia Schmidt, Bart Staes, Indrek Tarand, Marco Valli, Joachim Zeller, Dennis de Jong
<b>Substitutes present for the final vote</b>	Richard Ashworth, Karin Kadenbach

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

16	+
ALDE	Wolf Klinz
ECR	Monica Macovei
EFDD	Marco Valli
GUE/NGL	Luke Ming Flanagan, Dennis de Jong
PPE	Ingeborg Gräßle, Claudia Schmidt
S&D	Inés Ayala Sender, Karin Kadenbach, Arndt Kohn, Bogusław Liberadzki, Gilles Pargneaux, Georgi Pirinski
VERTS/ALE	Bart Staes, Indrek Tarand
NI	Cătălin Sorin Ivan

1	-
EFDD	Jonathan Bullock

4	0
PPE	Richard Ashworth, Tamás Deutsch, José Ignacio Salafranca Sánchez-Neyra, Joachim Zeller

Key to symbols:

+ : in favour

- : against

0 : abstention

25.9.2018

## OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs

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

Rapporteur for opinion: Neoklis Sylikiotis

### AMENDMENTS

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

#### Amendment 1

##### Proposal for a directive

##### Citation 1

*Text proposed by the Commission*

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

*Amendment*

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

#### Amendment 2

##### Proposal for a directive

##### Citation 1 a (new)



*Text proposed by the Commission*

*Amendment*

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

### **Amendment 3**

**Proposal for a directive  
Citation 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 4**

**Proposal for a directive  
Citation 3 a (new)**

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 5**

**Proposal for a directive  
Recital 1**

*Text proposed by the Commission*

*Amendment*

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in exposing and preventing

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. ***The purpose of this Directive is to create a climate of trust that enables***

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.

***whistleblowers to report observed or suspected breaches of law, as well as threats to the public interest.*** By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation.

## **Amendment 6**

### **Proposal for a directive**

#### **Recital 3**

##### *Text proposed by the Commission*

(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 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 ***to ensure that there are*** effective reporting channels.

## **Amendment 7**

### **Proposal for a directive**

#### **Recital 4 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

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

## **Amendment 8**

### **Proposal for a directive**

#### **Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 9**

### **Proposal for a directive**

#### **Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 10**

### **Proposal for a directive**

#### **Recital 20**

*Text proposed by the Commission*

*Amendment*

(20) This Directive should be without prejudice to the protection afforded to employees when reporting on breaches of Union employment law. In particular, in

(20) This Directive should be without prejudice to the protection afforded to employees when reporting on breaches of Union employment law. In particular, in

the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger.

***Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.***

the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger ***but does not foresee the right to report breaches.***

#### *Justification*

*The reference to Directive 89/391 / EEC Article 11 is misleading. Article 11 stresses that workers have the right to make suggestions to their employer without disadvantage to improve health and safety at work. The Directive does not provide for the right to report violations to authorities or even the public.*

### **Amendment 11**

#### **Proposal for a directive Recital 25**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

*range of* persons connected *in a broad sense* to the *organisation where the breach has occurred*.

connected to the *report*.

## Amendment 12

### Proposal for a directive Recital 26

#### *Text proposed by the Commission*

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union<sup>52</sup>, 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.

---

<sup>52</sup> 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.

#### *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 Union<sup>52</sup>, i.e. persons who, for a certain period of time, perform *or performed* services for and under the direction of another person, in return of which they receive remuneration. *In accordance with the Court's case law, the notion of worker should be interpreted broadly, including, for example civil servants*. Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, a *contractor or subcontractor or where work based relationship is solely bound to directives*, which are types of relationships where standard protections against unfair treatment are often difficult to apply.

---

<sup>52</sup> 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.

## Amendment 13

### Proposal for a directive Recital 27

#### *Text proposed by the Commission*

(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation in the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

#### *Amendment*

(27) Protection should also extend to ***people facilitating the reporting, intermediaries and investigative journalists, who disclose potential or occurred breach, as well as*** further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation in the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or

blacklisting/business boycotting.

## Amendment 14

### Proposal for a directive Recital 30 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 15

### Proposal for a directive Recital 33

*Text proposed by the Commission*

*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.

(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. ***Due to their importance for the freedom of expression and the right to receive information, public disclosures, including through the media, should be encouraged.***

## Amendment 16

### Proposal for a directive

## Recital 35 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 17

### Proposal for a directive

#### Recital 35 b (new)

*Text proposed by the Commission*

*Amendment*

***(35b) Reporting persons in possession of information related to high-level corruption should have recourse to a judicial body that is autonomous from other branches of government with the powers to grant reporting persons effective protection and address the breaches that they expose.***

## Amendment 18

### Proposal for a directive

#### Recital 42

*Text proposed by the Commission*

*Amendment*

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

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



the identity of the reporting person.

identity of the reporting person.

## **Amendment 19**

### **Proposal for a directive Recital 43**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## **Amendment 20**

### **Proposal for a directive Recital 44**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## **Amendment 21**

### **Proposal for a directive Recital 46**

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

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

## **Amendment 22**

### **Proposal for a directive**

#### **Recital 47**

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons,

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. ***Such entities should also provide information on rights guaranteed to whistleblowers, particularly their right to disclosure***

beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

***guaranteed by this Directive, and their right to turn to civil society organisations involved in whistleblower protection to this end, in particular those who provide strategic and legal advice to whistleblowers.*** Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

## **Amendment 23**

### **Proposal for a directive Recital 47 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 24**

### **Proposal for a directive Recital 48 a (new)**

*Text proposed by the Commission*

*Amendment*

***(48a) In all cases, the reporting person should be informed of the investigation's***

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

## **Amendment 25**

### **Proposal for a directive Recital 50**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## **Amendment 26**

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

#### *Text proposed by the Commission*

#### *Amendment*

***(51a) EU institutions should create a competent authority to receive and handle reports. The Union should ensure that the competent authority establishes independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving***

*and handling information provided by the reporting person; give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding three months or six months in duly justified cases and transmit the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law. The Union should also ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject matter of the reports. The competent authorities should communicate to the reporting person the final outcome of the investigations. The Union should ensure that any authority which has received a report but does not have the competence to address the breach reported transmits it to the competent authority and that the reporting person is informed.*

## **Amendment 27**

### **Proposal for a directive**

#### **Recital 64**

*Text proposed by the Commission*

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

*Amendment*

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

*jeopardised; or in cases of imminent and manifest danger for the public interest, or where there is a risk of irreversible damage, including, inter alia, harm to physical integrity.*

## Amendment 28

### Proposal for a directive Recital 65

#### *Text proposed by the Commission*

(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken by their employer or customer/recipient of services 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 29

### Proposal for a directive Recital 67

PE623.965v02-00

326/523

RR\1170275EN.docx

*Text proposed by the Commission*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

*Amendment*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public **and support the work of civil society organisations providing this information.** Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

**Amendment 30**

**Proposal for a directive  
Recital 82**

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 31

### Proposal for a directive Recital 85 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 32

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

*Text proposed by the Commission*

*Amendment*

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:

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

## Amendment 33

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

*Text proposed by the Commission*

*Amendment*

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

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



## Amendment 34

### Proposal for a directive

#### Article 2 – paragraph 1 – point c

*Text proposed by the Commission*

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

Amendment 35

*Amendment*

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

### Proposal for a directive

#### Article 2 – paragraph 1 – point d a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 36

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 37

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 38

### Proposal for a directive

#### Article 3 – paragraph 1 – point 1

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## Amendment 39

### Proposal for a directive

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

##### *Text proposed by the Commission*

##### *Amendment*

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

## Amendment 40

### Proposal for a directive

#### Article 3 – paragraph 1 – point 9

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## Amendment 41

### Proposal for a directive

#### Article 3 – paragraph 1 – point 10

*Text proposed by the Commission*

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

*Amendment*

(10) ‘work-related context’ means current or past work activities ***regardless of the employment status or business relationship*** in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches within which these persons may suffer retaliation if they report them;

## Amendment 42

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 43

### Proposal for a directive

#### Article 3 – paragraph 1 – point 12

*Text proposed by the Commission*

(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

*Amendment*

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

reporting person;

*family;*

#### **Amendment 44**

##### **Proposal for a directive**

##### **Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

#### **Amendment 45**

##### **Proposal for a directive**

##### **Article 4 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

#### **Amendment 46**

##### **Proposal for a directive**

##### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## Amendment 47

### Proposal for a directive

#### Article 4 – paragraph 6 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**a a) European Union institutions,  
agencies and bodies;**

## Amendment 48

### Proposal for a directive

#### Article 4 – paragraph 6 – point c

*Text proposed by the Commission*

*Amendment*

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

(c) municipalities;

## Amendment 49

### Proposal for a directive

#### Article 5 – paragraph 1 – point c

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 50

### Proposal for a directive

#### Article 5 – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 51

### Proposal for a directive

#### Article 5 – paragraph 2 – point b

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 52

### Proposal for a directive

#### Article 5 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 53

### Proposal for a directive

#### Article 6 – paragraph 2 – point b

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 54**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 55**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 56**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 57**

### **Proposal for a directive**

#### **Article 6 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. EU institutions shall create an**

*independent competent authority to receive, handle, follow-up reports and assure confidentiality and protection for whistleblowers.*

## **Amendment 58**

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

*Text proposed by the Commission*

*Amendment*

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

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

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

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

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

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

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



## Amendment 59

### Proposal for a directive

#### Article 7 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

**(ca) they guarantee free and independent advice and legal support for reporting persons and intermediaries.**

## Amendment 60

### Proposal for a directive

#### Article 7 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 61

### 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. ***In these meetings, the reporting person shall have the right to be accompanied by a representative of their choice. The employee representative is obliged to keep the information regarding the report and the process confidential and secure.***

## Amendment 62

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 63**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 64**

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

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 65**

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

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 66**

### **Proposal for a directive**

#### **Article 9 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 67**

### **Proposal for a directive**

#### **Article 9 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 9a**

##### ***Reporting of High Level Corruption***

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

## **Amendment 68**

### **Proposal for a directive**

#### **Article 10 – paragraph 1 – point b – point i**

*Text proposed by the Commission*

*Amendment*

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

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

**Amendment 69**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

**Amendment 70**

**Proposal for a directive**

**Article 13 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 71**

**Proposal for a directive**

**Article 13 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

**Amendment 72**

**Proposal for a directive**

**Article 13 – paragraph 2 -point c**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 73**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 74**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 75**

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

*Text proposed by the Commission*

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

*Amendment*

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

*working time arrangements;*

## **Amendment 76**

### **Proposal for a directive**

#### **Article 14 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) withholding of training;

*Amendment*

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

## **Amendment 77**

### **Proposal for a directive**

#### **Article 14 – paragraph 1 – point i**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 78**

### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(na) mandatory psychiatric or medical referrals;***

## **Amendment 79**

### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(nb) actual, threatened or attempted retaliatory actions;***

## **Amendment 80**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n c (new)**

*Text proposed by the Commission*

*Amendment*

**(nc) obstruction or cancellation of retirement benefits;**

**Amendment 81**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n d (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 82**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n e (new)**

*Text proposed by the Commission*

*Amendment*

**(ne) retaliatory investigations;**

**Amendment 83**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n f (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 84**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n g (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 85**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n h (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 86**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n i (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 87**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n j (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 88**

**Proposal for a directive**  
**Article 14 – paragraph 1 – point n k (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 89**

**Proposal for a directive**  
**Article 15 – paragraph 7**



*Text proposed by the Commission*

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.

*Amendment*

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal ***of proceedings***.

**Amendment 90**

**Proposal for a directive**

**Article 15 – paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*To be added as 9 new*

**Amendment 91**

**Proposal for a directive**

**Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 17a***

***No Waiver of Rights and Remedies***

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

*penalty or sanction.*

## **Amendment 92**

### **Proposal for a directive Article 19**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 93**

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

*Text proposed by the Commission*

*Amendment*

#### ***Article 20a***

##### ***Non-regression clause***

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

## **Amendment 94**

### **Proposal for a directive Annex I**

*Text proposed by the Commission*

*Amendment*

***[...]***

***deleted***



## PROCEDURE – COMMITTEE ASKED FOR OPINION

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

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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

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

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

Key to symbols:

+ : in favour

- : against

0 : abstention

12.9.2018

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY**

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: Younous Omarjee

### **SHORT JUSTIFICATION**

Several recent scandals linked to breaches of law, especially in the fields of finance, environment, public health and animal rights, have been exposed thanks to whistleblowers all over the world. These whistleblowers have often acted at their own risk and with no protection whatsoever, and they have done so not for themselves but for the common good. However, we are now seeing that in the majority of cases, these whistleblowers are threatened, tracked down, arrested, taken to court and even convicted, including in Europe.

This situation really highlights the flaws in the rule of law of our Member States. These flaws and gaps need to be addressed with ambition and responsibility, by establishing an effective protection framework for whistleblowers throughout the European Union.

This protection is all the more urgent since the Trade Secrets Directive has restricted whistleblowers' ability to act, to speak out and to defend themselves. Furthermore, this Directive places them in a vulnerable position, as do journalists, by exposing them to a greater risk of sanctions.

Freedom of information is vital in a democracy. To provide whistleblowers with sophisticated protection is to move towards a more sophisticated democracy. That is the purpose of what I am proposing.

The text presented by the European Commission is a definite step in the right direction, as it fills an empty space. However, to ensure we reach our common goal of protecting whistleblowers, this protection needs to be strengthened in a number of areas.

I therefore suggest that the proposal be improved by strengthening the rights and guarantees provided by the protection framework:

### **Establishment of a European Whistleblower Protection Office**

I propose that a **European Whistleblower Protection Office (OPLA)** be set up. This office would be directly accessible to whistleblowers, and would be added to the other proposed internal and external reporting procedures.

OPLA is an independent body that meets impartiality and confidentiality requirements, and is accessible throughout Europe. Its role is to receive first-hand reports, to ensure all these reports are monitored by carrying out investigations and, if need be, to bring in a competent authority to take appropriate action (CJEU, OLAF, national or European public prosecutors, etc.).

Just like national authorities, OPLA also has a duty to inform, to advise and to support whistleblowers.

### **Equal access to different reporting channels**

It should be ensured that (potential) whistleblowers are given equal access, i.e. there should be no hierarchy or ranking and no conditions aside from those stipulated by this Directive, to all reporting channels (internally or externally via the national channel or the European channel through OPLA).

### **A right to report and disclose**

Any person who has a professional link to a public or private entity, this link being broadly defined, must have the right to report to a competent authority information about an offence committed by this entity, be it definite or suspected, that relates to illegal acts or legal acts if they are at odds with the public interest or the general interest. In any case, and whether they have made use of their right to report or not, whistleblowers must always have the right to disclose.

### **Unconditional protection for whistleblowers**

When an individual exercises one of these rights, they must be given the unconditional protection provided for in this Directive. Specifically, their whistleblower status must be recognised, they must be protected against retaliation during and after the reporting process, and they must have access to legal advice and support if they so wish. This protection is unconditional, is granted even if the information proves to be inaccurate in the end, and it may only be challenged if sufficient evidence is provided of the whistleblower's bad faith and malicious intent.

### **Broader material scope**

The Directive's material scope should not be restricted. European law and European policies as a whole constitute a public interest that requires protection.

### **A reporting procedure that guarantees the rights of whistleblowers**

Internal and external reporting procedures and conditions should be improved to fully protect whistleblowers throughout the process.

### **Effective sanctions and remedial action**

Member States and the Commission are required to ensure, following notification and due diligence, the implementation of effective sanctions and remedial action, and should consult the competent national and European authorities where appropriate.

## AMENDMENTS

The Committee on the Environment, Public Health and Food Safety 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 (new)

*Text proposed by the Commission*

*Amendment*

- *having regard to the European Convention on Human Rights, in particular Article 10 thereof,*

### Amendment 2

#### Proposal for a directive

##### Citation -1 a (new)

*Text proposed by the Commission*

*Amendment*

- *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*

*Amendment*

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

(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.

reporting their concerns or suspicions for fear of retaliation ***or long administrative procedures. Several recent examples of retaliation against whistleblowers have significantly contributed to such fears. The purpose of this Directive is to create a climate of trust that enables whistleblowers to report observed or suspected breaches of law, as well as actions or activities that threaten the public interest.***

#### 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 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 ***by ensuring that there are*** effective 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 standards ensuring effective, ***unconditional***, whistleblower protection should apply in *all* acts and policy areas *of the Union, which by their very nature serve the public and general interest.*

## Amendment 7

### Proposal for a directive

#### Recital 6

*Text proposed by the Commission*

(6) Whistleblower protection is necessary to enhance the enforcement of Union law *on* public procurement. ***In addition to the need of*** preventing *and* detecting fraud *and* corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market.

*Amendment*

(6) Whistleblower protection is necessary ***in particular*** to enhance the enforcement of Union law, ***especially on human rights, public procurement, product and transport safety, environmental standards, ecocides, public health, health risks and consumer protection, food safety for people and animals, animal health, animal protection and animal welfare, nuclear safety and radiation protection, privacy and personal data, freedom of the press, competition law, financial services and taxation, protection of frail and vulnerable persons and on*** preventing, detecting *and combating* fraud, corruption, ***tax evasion and any other illegal activity*** in the context of the implementation of the EU budget, including procurement. It is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility

operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market.

## Amendment 8

### Proposal for a directive

#### Recital 9

##### *Text proposed by the Commission*

(9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely road and railway transport.

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag

##### *Amendment*

(9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>38</sup> and maritime transport safety<sup>39</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely ***special, inland waterway***, road and railway transport.

---

<sup>38</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>39</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag

State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

## Amendment 9

### 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 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, 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.

---

<sup>40</sup> COM(2018) 10 final.

<sup>41</sup> 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*

(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct ***or omission as well as potential breaches*** against the protection of the environment remain a ***serious*** challenge and need to be reinforced as acknowledged in the Commission Communication 'EU actions to improve environmental compliance and governance' of 18 January 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, the introduction of such protection ***is*** necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause serious harm to the public interest ***and the environment*** with possible spill-over impacts across national borders. This is also relevant in cases where unsafe products can cause environmental harm.

---

<sup>40</sup> COM(2018) 10 final.

<sup>41</sup> 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 10

### Proposal for a directive Recital 11

#### *Text proposed by the Commission*

(11) Similar considerations warrant the introduction of whistleblower protection to build upon existing provisions and prevent breaches of EU rules in the area of food chain and in particular on food and feed safety as well as on animal health and welfare. The different Union rules developed in these areas are closely interlinked. Regulation (EC) No 178/2002<sup>42</sup> sets out the general principles and requirements which underpin all Union and national measures relating to food and feed, with a particular focus on food safety, in order to ensure a high level of protection of human health and consumers' interests in relation to food as well as the effective functioning of the internal market. This Regulation provides, amongst others, that food and feed business operators are prevented from discouraging their employees and others from cooperating with competent authorities where this may prevent, reduce or eliminate a risk arising from food. The Union legislator has taken a similar approach in the area of 'Animal Health Law' through Regulation (EU) 2016/429 establishing the rules for the prevention and control of animal diseases which are transmissible to animals or to humans <sup>43</sup>.

#### *Amendment*

(11) Similar considerations warrant the introduction of whistleblower protection to build upon existing provisions and prevent breaches of EU rules in the area of food chain and in particular on food and feed safety as well as on animal health, **protection** and welfare. The different Union rules developed in these areas are closely interlinked. Regulation (EC) No 178/2002<sup>42</sup> sets out the general principles and requirements which underpin all Union and national measures relating to food and feed, with a particular focus on food safety, in order to ensure a high level of protection of human health and consumers' interests in relation to food as well as the effective functioning of the internal market. This Regulation provides, amongst others, that food and feed business operators are prevented from discouraging their employees and others from cooperating with competent authorities where this may prevent, reduce or eliminate a risk arising from food. The Union legislator has taken a similar approach in the area of 'Animal Health Law' through Regulation (EU) 2016/429 establishing the rules for the prevention and control of animal diseases which are transmissible to animals or to humans <sup>43</sup>. ***Council Directive 98/58/EC<sup>43a</sup> and Directive 2010/63/EU of the European Parliament and of the Council<sup>43b</sup>, as well as Council Regulation (EC) No 1/2005 <sup>43c</sup> and Council Regulation (EC) No 1099/2009<sup>43d</sup> lay down rules on the protection and welfare of animals kept for farming purposes, during transport, at the time of killing, and when they are used for animal experimentation.***

<sup>42</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>43</sup> OJ L 84, p. 1

<sup>42</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>43</sup> OJ L 84, p. 1

<sup>43a</sup> *Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (OJ L 221, 8.8.1998, p. 23).*

<sup>43b</sup> *Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes (OJ L 276, 20.10.2010, p. 33).*

<sup>43c</sup> *Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 003, 5.1.2005, p. 1).*

<sup>43d</sup> *Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ L 303, 18.11.2009, p. 1).*

## **Amendment 11**

### **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 systems<sup>45</sup> which introduces notification of incidents

#### *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 seriously harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems<sup>45</sup>, 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. 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.

(including those that do not compromise personal data) and security requirements for entities providing essential services across many sectors (e.g. energy, **tourism**, health, transport, banking, **construction**, etc.) **for** providers of key digital services (e.g. cloud computing services) **and for suppliers of basic utilities, such as water, electricity, gas**. 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.

---

<sup>45</sup> 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.

---

<sup>45</sup> 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 12**

### **Proposal for a directive Recital 28 a (new)**

*Text proposed by the Commission*

*Amendment*

***(28a) Protection should be given to individuals working at institutions within the Union, but also to individuals working in European entities located outside Union territory. Such protection should also apply to officials as well as other employees and interns working at the institutions, agencies and bodies of the Union.***

## **Amendment 13**

### **Proposal for a directive Recital 37**

*Text proposed by the Commission*

(37) For the effective detection and prevention of breaches of Union law it ***is vital that*** the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

*Amendment*

(37) For the effective detection and prevention of breaches of Union law it ***may be beneficial if*** the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

**Amendment 14**

**Proposal for a directive  
Recital 39**

*Text proposed by the Commission*

(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.

*Amendment*

(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in the area of financial services ***and in those sectors that provide care for severely disabled individuals and/or individuals who are vulnerable or frail due to age or physical or mental impairment***. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.

**Amendment 15**

**Proposal for a directive  
Recital 40**

*Text proposed by the Commission*

(40) ***It should be clear that, in the case of private legal entities which do not provide for internal reporting channels,*** reporting persons should be able to report directly to the competent authorities and

*Amendment*

(40) ***In any case,*** reporting persons should be able to report directly ***externally*** to the ***national authority (hereinafter 'competent authorities')***, ***and to exercise their right to disclose,*** and such persons



such persons should enjoy the protection against retaliation provided by this Directive.

should enjoy the protection against retaliation provided by this Directive.

## Amendment 16

### Proposal for a directive Recital 44

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 17

### Proposal for a directive Recital 46

#### *Text proposed by the Commission*

(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further unnecessary reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow up to the report (for instance, closure based on lack of sufficient evidence or other grounds, launch of an

#### *Amendment*

(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further unnecessary reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow up to the report (for instance, closure based on lack of sufficient evidence or other grounds, launch of an

internal enquiry and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total three months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect.

internal enquiry and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total three months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect. ***The reporting person should be informed of the investigation's progress and should be able to access the draft report at least once so as to be able to revise it, comment on it and correct it, if necessary, albeit with no obligation to do so. Those comments should be incorporated and taken into account in the monitoring of the investigation. The reporting person should be informed of the investigation's outcome, and he or she should be able to revise and comment on the final report of the investigation. Those comments should be then included in the final report.***

**Amendment 18**  
**Proposal for a directive**  
**Recital 47**

*Text proposed by the Commission*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers,

*Amendment*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. ***To that end, they should be able to consult and seek advice from the national authority, which is a first point of information and contact. They should also be able to consult civil society organisations involved in the protection of whistleblowers.*** Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent

distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

authorities. ***They should also provide information on rights guaranteed to whistleblowers, particularly their right to disclosure guaranteed by this Directive, and their right to turn to civil society organisations involved in whistleblower protection to this end, specifically those who provide strategic and legal advice to whistleblowers.*** Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

## **Amendment 19**

### **Proposal for a directive Recital 59**

#### *Text proposed by the Commission*

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them should guarantee that those procedures are adequate and thus serving their purpose.

#### *Amendment*

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them, ***including recommendations by civil society organisations***, should guarantee that those procedures are adequate and thus serving their purpose.

## **Amendment 20**

### **Proposal for a directive Recital 62**

#### *Text proposed by the Commission*

***(62) As a rule, reporting persons should first use the internal channels at their disposal and report to their***

#### *Amendment*

***deleted***

*employer. However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry).*

**Amendment 21**  
**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. 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 persons closely linked to the reporting person, irrespective of the nature of the activities, and of 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 representatives *of individuals* who have provided support to the reporting person.

## Amendment 22

### Proposal for a directive

#### Recital 67

##### *Text proposed by the Commission*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented.

##### *Amendment*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting *or exercising their right to disclose. Accordingly, the competent authorities should be available as a first point of contact and information for potential whistleblowers to provide them with any information regarding their rights and the reporting procedures available to them, and to advise and guide them on what steps to take.* Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and wrongdoings are detected in a timely manner or even prevented. *In addition to the competent authorities, civil society organisations involved in whistleblower protection, especially in the context of strategic and legal advice provided to them, or in the context of monitoring the enforcement of this Directive, should also be a point of contact for potential whistleblowers, to provide them with any information regarding their rights and the*

*reporting procedures available to them, to direct them towards the competent authority, and to advise them and guide them on what steps to take.*

## **Amendment 23**

### **Proposal for a directive Recital 68**

#### *Text proposed by the Commission*

(68) Under certain national frameworks and in certain cases, reporting persons suffering retaliation may benefit from forms of certification of the fact that they meet the conditions of the applicable rules. Notwithstanding such possibilities, they should have effective access to judicial review, whereby it falls upon the courts to decide, based on all the individual circumstances of the case, whether they meet the conditions of the applicable rules.

#### *Amendment*

(68) Under certain national frameworks and in certain cases, reporting persons suffering retaliation may benefit from forms of certification of the fact that they meet the conditions of the applicable rules. Notwithstanding such possibilities, they should have effective access to judicial review, whereby it falls upon the courts to decide, based on all the individual circumstances of the case, whether they meet the conditions of the applicable rules.

## **Amendment 24**

### **Proposal for a directive Recital 80**

#### *Text proposed by the Commission*

(80) This Directive introduces minimum standards and Member States should have the power to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned persons.

#### *Amendment*

(80) This Directive introduces minimum standards and Member States should have the power ***and be encouraged*** to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned persons.

## **Amendment 25**

### **Proposal for a directive Article 1**

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:

a) breaches falling within the scope of the Union acts set out in the Annex (Part I and Part II) as regards the following areas:

- (i) public procurement;
- (ii) financial services, prevention of money laundering and terrorist financing;
- (iii) product safety;
- (iv) transport safety;
- (v) protection of the environment;
- (vi) nuclear safety;
- (vii) food and feed safety, *animal health and welfare*;
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems.

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

a) breaches falling within the scope of the Union acts, *and especially those* set out in the Annex (Part I and Part II) as regards the following areas:

- (i) public procurement;
- (ii) financial services, prevention of money laundering and terrorist financing;
- (iia) social standards, health and safety at work;*
- (iii) *food and non-food* product safety;
- (iv) transport safety;
- (v) protection of the environment, *sustainable development, waste management, sea, air and noise pollution, protection and management of water and soils, protection of the natural world and biodiversity as well as combating climate change and wildlife crime*;
- (vi) nuclear safety;
- (vii) food and feed safety;
- (viiia) animal protection, health and welfare;*
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems.
- ab) freedom of expression and information as referred to in Article 11 of the Charter of Fundamental Rights of the*

b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

c) ***breaches affecting the*** financial interests of the Union as defined by Article 325 TFEU and ***as further specified***, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;

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.

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.

***European Union, and case-law based on that Article;***

***ac) tax fraud, tax evasion and tax optimisation;***

***ad) social, environmental, economic and tax dumping;***

***ae) ecocides;***

***b) competition law, especially*** breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

c) financial interests of the Union as defined by Article 325 TFEU and in particular ***in accordance with*** Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;

d) 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.

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 ***and they shall supplement the specific regulations listed in the Annex in instances where they provide more protection to whistleblowers. This paragraph shall apply only in cases where the protection provided for in sector-specific acts is higher than that provided for in this Directive.***



## Amendment 26

### Proposal for a directive

#### Article 2 – paragraph 1 – point d

*Text proposed by the Commission*

d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.

*Amendment*

d) any persons working under the supervision and direction of contractors, subcontractors, suppliers **and service providers**.

## Amendment 27

### Proposal for a directive

#### Article 2 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. This Directive shall apply to officials as well as to other employees and interns working at the institutions, agencies and bodies of the Union.**

## Amendment 28

### Proposal for a directive

#### Article 2 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

**2b. This Directive shall apply to individuals falling within the definition laid out in Article 1 of private or public legal entities located within the Union, as well as private or public European legal entities located outside Union territory.**

## Amendment 29

### Proposal for a directive

#### Article 2 – paragraph 2 c (new)

*Text proposed by the Commission*

*Amendment*

**2c. This Directive shall also apply to**

*individuals who act as intermediaries between the reporting person and the person distributing the information.*

## Amendment 30

### Proposal for a directive

#### Article 3 – paragraph 1 – point 5

##### *Text proposed by the Commission*

5. ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact ***through his or her work***;

##### *Amendment*

5. ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur, ***and/or in the event of a serious, imminent threat or where there is a risk of irreversible damage to the person or that person's property***, in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact;

## Amendment 31

### Proposal for a directive

#### Article 3 – paragraph 1 – point 9

##### *Text proposed by the Commission*

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

##### *Amendment*

9. ‘reporting person’ means a natural or legal person who reports or discloses information on breaches acquired;

## Amendment 32

### 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

##### *Amendment*

12. ‘retaliation’ means any threatened or actual act or omission prompted by the internal or external reporting ***or disclosure*** which occurs in a work-related context and

may cause unjustified detriment to the reporting person;

causes or may cause unjustified detriment to the reporting person;

### Amendment 33

#### 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 appropriate remedial action**;

### Amendment 34

#### Proposal for a directive

#### Article 4

##### *Text proposed by the Commission*

##### Article 4

Obligation to establish internal channels and procedures for reporting and follow-up of reports

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, **if appropriate**.

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by

##### *Amendment*

##### Article 4

Obligation to establish internal channels and procedures for reporting and follow-up of reports **and for protecting whistleblowers**

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners **and civil society organisations. They shall ensure that legal entities in the private and public sectors provide those channels with adequate resources to function properly.**

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by

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

3. The legal entities in the private sector referred to in paragraph 1 are the following:

- a) private legal entities with 50 or more employees;
- b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10 million or more;
- c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering ***or*** terrorist financing, as regulated under the Union acts referred to in the Annex.

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003<sup>62</sup>, other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

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

other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d).

3. The legal entities in the private sector referred to in paragraph 1 are the following:

- a) private legal entities with 50 or more employees;
- b) private legal entities with an annual business turnover or ***group*** annual balance sheet total of EUR 10 million or more;
- c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering, terrorist financing, ***and areas of health-related risk, environmental risk and risk to public health***, as regulated under the Union acts referred to in the Annex;

***c a) private and public legal entities of any size that provide care for individuals who are severely disabled and/or who are both vulnerable and frail due to their age or physical/mental impairment.***

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003<sup>62</sup> other than those referred to in paragraph 3(c) ***and (ca)*** to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

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

- a) state administration;
- b) regional administration and departments;
- c) municipalities with more than 10 000 inhabitants;
- d) other entities governed by public law.

---

<sup>62</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

## **Amendment 35**

### **Proposal for a directive**

#### **Article 5**

*Text proposed by the Commission*

#### Article 5

Procedures for internal reporting and follow-up of reports

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:

- a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised staff members;
- b) the designation of a person or department competent for following up on the reports;
- c) diligent follow up to the report by the designated person or department;

- a) state administration;
- b) regional administration and departments;
- c) municipalities with more than 10 000 inhabitants;
- d) other entities governed by public law;

***d a) Union institutions, agencies and bodies;***

---

<sup>62</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

*Amendment*

#### Article 5

Procedures for internal reporting and follow-up of reports

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:

***-a) the publication of all relevant information on internal reporting proceedings and report follow-up;***

- a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised staff members;
- b) the designation of a person or department competent for following up on the reports;
- c) diligent follow up to the report by the designated person or department ***and appropriate and timely action if needed;***

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

e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all of the following ways:

a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

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

*c a) an acknowledgement of receipt within five days;*

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

*d a) the opportunity for the reporting person with no obligation to do so to look over, examine and comment on the final report at the end of the investigation, and that his or her comments must be included in the final report, and in the published version of the report, where applicable;*

*d b) the publication of the report, in such a way as to ensure that the reporting person's anonymity is maintained unless he or she requests otherwise, on the public communication channels of the private and public legal entity in question, which specifically shall contain a summary of the investigation, the investigation's outcome, the reporting person's final comments and remedial action taken by the entity in question;*

e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all of the following ways:

a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

(b) physical meetings with the person or department designated to receive reports, *accompanied, if the reporting person so requests, by a union representative or his or her legal representative;*

Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.

#### **Amendment 36**

#### **Proposal for a directive**

#### **Article 6**

*Text proposed by the Commission*

#### **Article 6**

***Obligation to establish external reporting channels and to follow up on reports***

1. Member States shall designate ***the authorities competent*** to receive and handle reports.
2. Member States shall ensure that ***the competent authorities***:
  - 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;
  - b) ***give*** feedback to the reporting person about the follow-up of the report within a reasonable timeframe not

Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.

***2 a. If a telephone conversation is recorded and stored, the whistleblower’s prior consent must be obtained, with confidentiality assured so the whistleblower is guaranteed protection.***

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.

*Amendment*

#### **Article 6**

***Setting up national authorities for reporting and for protecting whistleblowers***

1. Member States shall designate ***or set up a national authority*** to receive and handle reports, ***and to ensure that they are closely followed up and that reporting persons are protected***;
2. Member States shall ensure that ***this national authority***:
  - a) ***establishes*** independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving and handling information provided by the reporting person;
  - b) ***gives*** feedback to the reporting person about the follow-up of the report within a reasonable timeframe not

exceeding three months or six months in duly justified cases;

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

3. Member States shall ensure that ***competent authorities follow*** up on the reports by taking the necessary measures and ***investigate***, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.

4. Member States shall ensure that any authority which has received a report but does not have the competence to address

exceeding three months or six months in duly justified cases;

c) ***transmits*** the information contained in the report, ***where appropriate***, to competent bodies, offices or agencies of the Union for further investigation, where provided for under national or Union law, ***and passes that information on to the whistleblower right away by any means necessary***;

***c a) gives the reporting person the opportunity, without compelling him or her, to look over, examine and comment on the draft report over the course of the investigation, and the final report before it is published at the end of the investigation and, where relevant, take his or her comments into account;***

***c b) publishes the contents of the report, ensuring that the reporting person's anonymity is maintained unless he or she requests otherwise, via their own communication channels.***

3. Member States shall ensure that ***the national authority follows*** up on the reports by taking the necessary measures and ***investigates***, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.

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

***3 b. Member States shall ensure that the national authority publishes the final report, ensuring the reporting person's anonymity is maintained unless he or she waives his or her right to anonymity, and that the national authority ensures that the report contains the reporting person's comments as well as remedial action where appropriate.***

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.

the breach reported transmits it to the **national** authority **immediately** and that the reporting person is informed **without delay**.

**4a. Member States shall ensure that whistleblowers are provided with legal support throughout proceedings. They shall provide legal advice at all times for any potential whistleblower.**

**4b. Member States shall ensure that reporting persons have access to legal aid during the procedure.**

## **Amendment 37**

### **Proposal for a directive**

#### **Article 7 – paragraph 1 – point b**

*Text proposed by the Commission*

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**;

*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 **authorities**;

## **Amendment 38**

### **Proposal for a directive**

#### **Article 7 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. If a telephone conversation is recorded and stored, the competent authorities shall ensure the whistleblower's prior consent is acquired, and that his or her confidentiality is protected so that the whistleblower is him or herself guaranteed protection.**

## **Amendment 39**

### **Proposal for a directive**

#### **Article 9**

Article 9

Procedures applicable to external reporting

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:

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

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

c) the confidentiality regime applicable to reports, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed.

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality

Article 9

Procedures applicable to external reporting

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:

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

***a a) the way in which the competent authorities ensure the reporting person can revise, correct and comment on the report over the course of the investigation, without compelling him or her to do so, the fact that his or her comments are incorporated at the end of the investigation, as appropriate, and that he or she may comment on the final report, and that such comments are included in the final report and when it is published;***

***a b) due follow-up on the report by the designated person or department, including appropriate action as well as investigations into the subject of the reports, where necessary;***

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

c) the confidentiality regime applicable to reports, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed, ***as well as the remedies available to the reporting person to deal with those situations.***

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality

of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.

#### **Amendment 40**

##### **Proposal for a directive**

##### **Article 10 – paragraph 1 – introductory part**

###### *Text proposed by the Commission*

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

#### **Amendment 41**

##### **Proposal for a directive**

##### **Article 10 – paragraph 1 – point b a (new)**

###### *Text proposed by the Commission*

of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.

###### *Amendment*

Member States ***and the Commission*** shall ensure that competent authorities ***and the private and public legal entities setting up internal proceedings and channels for reporting and their follow up*** publish on their websites in a separate, easily identifiable and accessible section at least the following information:

###### *Amendment*

***ba) contacts from civil society organisations involved in the protection of whistleblowers;***

## Amendment 42

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

**ga) access to reports and recommendations published by the competent authorities;**

## Amendment 43

### Proposal for a directive

#### Article 11 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority reasonably **believes** that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

2. Competent authorities **as well as private and public legal entities** shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority, **or private and public legal entities, believe** that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

## Amendment 44

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent **authority** shall have the right to document the oral reporting in one of the following ways:

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person **and ensuring the necessary confidentiality is maintained**, the competent **authorities and the private and public legal entities** shall have the right to document the oral reporting in one of the following ways:

## Amendment 45

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 2

##### *Text proposed by the Commission*

The competent **authority** shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

##### *Amendment*

The competent **authorities and the public and private legal entities** shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

## Amendment 46

### Proposal for a directive

#### Article 11 – paragraph 4

##### *Text proposed by the Commission*

4. Where an unrecorded telephone line is used for reporting, the competent **authority** shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent **authority** shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

##### *Amendment*

4. Where an unrecorded telephone line is used for reporting, the competent **authorities and the private and public legal entities** shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent **authorities and the public and private legal entities** shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

## Amendment 47

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 1 – introductory part

##### *Text proposed by the Commission*

Where a person requests a meeting with the dedicated staff members of the competent **authority** for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and

##### *Amendment*

Where a person requests a meeting with the dedicated staff members of the competent **authorities or the private and public legal entities** for reporting according to Article 7(2)(c), competent authorities **and the private and public legal entities** shall ensure, subject to the consent of the

retrievable form. A competent **authority** shall have the right to document the records of the meeting in one of the following ways:

reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. Competent **authorities and private and public legal entities** shall have the right to document the records of the meeting in one of the following ways:

## Amendment 48

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 1 – point b

##### *Text proposed by the Commission*

b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority.

##### *Amendment*

b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority **and the private and public legal entities**.

## Amendment 49

### Proposal for a directive

#### Article 11 – paragraph 5 – subparagraph 2

##### *Text proposed by the Commission*

The competent **authority** shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

##### *Amendment*

The competent **authorities and the public and private legal entities** shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

## Amendment 50

### 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

##### *Amendment*

1. A reporting person shall qualify for protection under this Directive **as soon as he/she consults one of the internal and external reporting channels provided for by this Directive, and this shall apply throughout proceedings and even when they have concluded, unless there is no**

**Amendment 51****Proposal for a directive****Article 13 – paragraph 2**

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

**a)      *he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;***

**b)      *internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;***

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

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

**e)      *he or she had reasonable grounds to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;***

**f)      *he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.***

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

**Amendment 52**  
**Proposal for a directive**  
**Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. A person who anonymously discloses information that falls within the scope of this directive and whose identity is subsequently revealed shall also qualify for protection under this Directive.**

**Amendment 53**  
**Proposal for a directive**  
**Article 13 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported ***externally*** in accordance with the conditions set out in paragraph 2.

3. A ***natural or legal*** person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported in accordance with the conditions set out in paragraph ***1***.

**Amendment 54**  
**Proposal for a directive**  
**Article 14**

*Text proposed by the Commission*

*Amendment*

1. Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, against ***reporting persons meeting the conditions set out in Article 13, including in particular in the form of:***

1. Member States ***and the Commission*** shall take the necessary measures to prohibit ***and impose penalties for*** any form of retaliation, whether direct or indirect, against:

- a) reporting persons meeting the definition set out in point 9 of Article 3 or those preparing an imminent report or disclosure;***
- b) any relatives of the reporting person who are also in a work-related***



*relationship with the latter's employer or customer/recipient of services;*

*c) any natural or legal person who is assisting, collaborating or has collaborated with the reporting person on the report, particularly through sharing information about the report;*

*d) any person involved in exercising the reporting person's right to disclosure;*

*e) any person representing the reporting person or who has provided support to the reporting person;*

*f) the family and relatives of the reporting person.*

*1a. The retaliation referred to in paragraph 1 may take the forms mentioned below in particular, either as an actual act or even as threats or suggestions:*

a) suspension, lay-off, dismissal or equivalent measures;

b) demotion or withholding of promotion;

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

d) withholding of training;

e) negative performance assessment or employment reference;

f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;

g) coercion, intimidation, harassment or ostracism at the workplace;

h) discrimination, disadvantage or unfair treatment;

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

j) failure to renew or early termination of the temporary employment

a) suspension, lay-off, dismissal or equivalent measures;

b) demotion or withholding of promotion;

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

d) withholding of training;

e) negative performance assessment or employment reference, **or refusal to provide an employment reference;**

f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;

g) coercion, intimidation, harassment or ostracism at **or outside of** the workplace, **or failure to address them;**

h) discrimination, disadvantage or unfair treatment;

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

j) failure to renew or early termination of the temporary employment

contract;

k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;

l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;

m) early termination or cancellation of contract for goods or services;

n) cancellation of a licence or permit.

contract;

k) damage, including to the person's reputation, ***particularly on social media***, or financial loss, including loss of business and loss of income;

l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;

m) early termination or cancellation of contract for goods or services;

***m a) refusal to consider a feasible transfer option upon the reporting person's request;***

n) cancellation of a licence or permit;

***na) wilful ignorance of the retaliation by a supervisor or supervisory body who is tasked with monitoring the protected person;***

***nb) breaching the confidentiality and anonymity of the reporting person and other persons protected by this Directive;***

***nc) physical, moral or financial pressure exerted on the persons protected by this Directive;***

***nd) denying the rights of the defence, including excessive delays in the handling of cases;***

***ne) abuse, including institutional abuse.***

## Amendment 55

### Proposal for a directive Article 15 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against

#### *Amendment*

1. Member States ***and the Commission*** shall take the necessary measures to ensure the protection of reporting persons meeting the conditions

retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

#### **Amendment 56**

##### **Proposal for a directive**

##### **Article 15 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**6a. Reporting persons shall have access to remedial measures as appropriate. The choice of the appropriate remedial measures shall depend on the type of retaliation to which he or she was subjected.**

#### **Amendment 57**

##### **Proposal for a directive**

##### **Article 15 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

**7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943,** in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.

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

#### **Amendment 58**

##### **Proposal for a directive**

##### **Article 15 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**7a. The reporting persons may benefit from the most favourable protective measures in Member States where the entity in question, or the group of which it**

*is a subsidiary, are located.*

**Amendment 59**  
**Proposal for a directive**  
**Article 15 – paragraph 8**

*Text proposed by the Commission*

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 Council<sup>63</sup>, 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.

---

<sup>63</sup> 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).

**Amendment 60**  
**Proposal for a directive**  
**Article 17**

*Text proposed by the Commission*

Article 17

***Penalties***

1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:
- a) hinder or attempt to hinder reporting;
  - b) take retaliatory measures against reporting persons;

*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 Council<sup>63</sup>, 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, ***and also in situations in which the reporting person faces threats made with the intention of preventing justice from being done.***

---

<sup>63</sup> 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).

*Amendment*

Article 17

***Sanctions***

1. Member States ***and the Commission*** shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:
- a) hinder or attempt to hinder reporting;
  - b) take retaliatory measures against reporting persons ***and against any natural or legal person associated with the***

c) bring vexatious proceedings against reporting persons;

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

2. Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons making malicious or abusive reports or disclosures, including measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures.

*activities protected by this Directive;*

c) bring vexatious proceedings against reporting persons *and against any natural or legal person associated with the activities protected by this Directive;*

d) breach the duty of maintaining the confidentiality of the identity of reporting persons *and of any natural or legal person associated with the activities protected by this Directive;*

*d a) repeat the infringement reported by the reporting person once the case is closed.*

2. Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons making malicious or abusive reports or disclosures, *provided that their bad faith can be proven*, including measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures. *That shall not apply to reports and disclosures made in good faith, and where there were reasonable grounds to believe that the facts reported or disclosed were true.*

## Amendment 61

### Proposal for a directive Article 22 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 22a*

#### *Delegated acts to update the Annex*

*Whenever a new Union legal act falls within the material scope laid down in Article 1(1)(a) or Article 1 (2), the Commission shall amend the Annexes to this Directive accordingly via a delegated act.*

## Amendment 62

### Proposal for a directive

#### Annex I – part I – point A – point 1 – introductory part

##### *Text proposed by the Commission*

1. Procedures for procurement relating to supplies contracts for defence products and supplies and services contracts for water, energy, transport and postal services and any other contract or service as regulated under Union legislation:

##### *Amendment*

1. Procedures for procurement relating to supplies contracts for defence products and supplies and services contracts for water, energy, transport and postal services and any other contract or service as regulated under Union legislation, ***including:***

## Amendment 63

### Proposal for a directive

#### Annex I – part I – point A – point 2 – introductory part

##### *Text proposed by the Commission*

2. Review procedures regulated by:

##### *Amendment*

2. Review procedures regulated ***in particular*** by:

## Amendment 64

### Proposal for a directive

#### Annex I – part I – point B – paragraph 1 – introductory part

##### *Text proposed by the Commission*

Rules establishing a regulatory and supervisory framework and consumer and investor protection in the Union financial services and capital markets, banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice and the services listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives

##### *Amendment*

Rules establishing a regulatory and supervisory framework and consumer and investor protection in the Union financial services and capital markets, banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice and the services listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives

2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as regulated by:

2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as regulated *in particular* by:

## **Amendment 65**

### **Proposal for a directive**

#### **Annex I – part I – point B a (new)**

*Text proposed by the Commission*

*Amendment*

**Ba. Article 1(a)(ii)(b) – social standards, health and safety at work**

**1. Social standards of the European Union, as regulated in particular by:**

(i) **Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24);**

(ii) **Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32);**

(iii) **Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206, 29.7.1991, p. 19);**

(iv) **Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20.8.1994, p. 12);**

(v) **Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16);**

(vi) **Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed**

*and self-employed persons moving within the Community (OJ L 209, 25.7.1998, p. 46);*

*(vii) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16);*

*(viii) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22);*

*(ix) Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (OJ L 302, 1.12.2000, p. 57);*

*(x) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16);*

*(xi) Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35-39) and Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1);*



*(xii) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10);*

*(xiii) Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37);*

*(xiv) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9);*

*(xv) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23);*

*(xvi) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36);*

*(xvii) Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1);*

*(xviii) Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8);*

*(xix) Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11);*

*(xx) Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (OJ L 128, 30.4.2014, p. 1);*

*(xxi) Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003 concerning the labour cost index (OJ L 69, 13.3.2003, p. 1);*

*(xxii) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51);*

*(xxiii) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1);*

*(xxiv) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1.);*

*(xxv) Regulation (EU) No 223/2014 of the European Parliament and of the*

***Council of 11 March 2014 on the Fund for European Aid to the Most Deprived (OJ L 72, 12.3.2014, p. 1);***

***(xxvi) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19);***

***2. Workplace health and safety standards, as regulated in particular by:***

***(i) all individual Directives within the meaning of Article 16(1) of Directive 89/391/EEC;***

***(ii) Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels (OJ L 113, 30.4.1992, p. 19);***

***(iii) Directive 2001/95/EC of 3 December 2001 on general product safety (OJ L 11, 15.01.2002, p. 4);***

***(iv) Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24);***

***(v) Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC (OJ L 38, 9.2.2006, p. 36);***

***(vi) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13);***

***(vii) Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 260,***

3.10.2009, p. 5);

(viii) *Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (OJ L 330, 16.12.2009, p. 28);*

(ix) *Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).*

## Amendment 66

### Proposal for a directive

#### Annex I – part I – point C – point 1 – introductory part

##### *Text proposed by the Commission*

1. General safety requirements of products placed in the Union market as defined and regulated by:

##### *Amendment*

1. General safety requirements of products placed in the Union market as defined and regulated *in particular* by:

## Amendment 67

### Proposal for a directive

#### Annex I – part I – point C – point 2 – introductory part

##### *Text proposed by the Commission*

2. Marketing and use of sensitive and dangerous products, as regulated by:

##### *Amendment*

2. Marketing and use of sensitive and dangerous products, as regulated *in particular* by:

## Amendment 68

### Proposal for a directive

#### Annex I – part I – point D – point 3 – introductory part

##### *Text proposed by the Commission*

3. Safety requirements in the road

##### *Amendment*

3. Safety requirements in the road

sector as regulated by:

sector as regulated *in particular* by:

## **Amendment 69**

### **Proposal for a directive**

#### **Annex I – part I – point D – point 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

4. Safety requirements in the maritime sector as regulated by:

4. Safety requirements in the maritime sector as regulated *in particular* by:

## **Amendment 70**

### **Proposal for a directive**

#### **Annex I – part I – point E – title**

*Text proposed by the Commission*

*Amendment*

E Article 1(a)(v) – protection of the environment:

E Article 1(a)(v) – protection of the environment, *sustainable development, waste management, marine, air and noise pollution, protection and management of water and soils, protection of nature and biodiversity and the fight against climate change*:

## **Amendment 71**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***1. Provisions on environmental responsibility, including:***

*(NB: this paragraph should be inserted before Annex I, part I, point E, point i)*

## **Amendment 72**

### **Proposal for a directive**

#### **Annex I – part I – point E – point iii**

*Text proposed by the Commission*

*Amendment*

(iii) *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23);* **deleted**

#### **Amendment 73**

**Proposal for a directive**  
**Annex I – part I – point E – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) *Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52);* **deleted**

#### **Amendment 74**

**Proposal for a directive**  
**Annex I – part I – point E – point v**

*Text proposed by the Commission*

*Amendment*

(v) *Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55);* **deleted**

#### **Amendment 75**

**Proposal for a directive**  
**Annex I – part I – point E – point vi**

*Text proposed by the Commission*

*Amendment*

(vi) ***Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1);*** ***deleted***

#### **Amendment 76**

**Proposal for a directive  
Annex I – part I – point E – point vii**

*Text proposed by the Commission*

*Amendment*

(xvii) ***Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60);*** ***deleted***

#### **Amendment 77**

**Proposal for a directive  
Annex I – part I – point E – point viii**

*Text proposed by the Commission*

*Amendment*

(viii) ***Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1);*** ***deleted***

## **Amendment 78**

### **Proposal for a directive**

#### **Annex I – part I – point E – point ix**

*Text proposed by the Commission*

*Amendment*

*(ix) Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1).*

*deleted*

## **Amendment 79**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. Provisions on access to environmental information:*

*(i) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26);*

*(ii) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43);*

*(iii) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13);*

*(iv) Directive 2007/2/EC of the*



*European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).*

*(v) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice (OJ L 156, 25.6.2003, p. 17).*

*(NB. This paragraph should be placed after point E, (ii))*

## **Amendment 80**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Provisions on the environment and the climate, including:***

***(i) Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (OJ L 347, 20.12.2013, p. 185);***

***(ii) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16);***

***(iii) Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63), and all related***

***Regulations;***

***(iv) Regulation (EU) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions (OJ L 129, 30.4.2014, p. 1);***

***(v) Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114);***

***(vi) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13);***

***(vii) Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195);***

***(viii) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283 of 31.10.2003 p. 51);***

***(ix) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and***

*2010/30/EU and repealing Directives  
2004/8/EC and 2006/32/EC (OJ L 315,  
14.11.2012, p. 1).*

## **Amendment 81**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1c. Provisions on sustainable  
development and waste management,  
including:***

***(i) Directive 2008/98/EC of the  
European Parliament and of the Council  
of 19 November 2008 on waste and  
repealing certain Directives (OJ L 312,  
22.11.2008, p. 3);***

***(ii) Council Directive 1999/31/EC of  
26 April 1999 on the landfill of waste (OJ  
L 182, 16.7.1999, p. 1);***

***(iii) Regulation (EC) No 1013/2006 of  
the European Parliament and of the  
Council of 14 June 2006 on shipments of  
waste (OJ L 190, 12.7.2006, p. 1);***

***(iv) European Parliament and Council  
Directive 94/62/EC of 20 December 1994  
on packaging and packaging waste (OJ L  
365, 31.12.1994, p. 10);***

***(v) Directive (EU) 2015/720 of the  
European Parliament and of the Council  
of 29 April 2015 amending Directive  
94/62/EC as regards reducing the  
consumption of lightweight plastic carrier  
bags (OJ L 115, 6.5.2015, p. 11);***

***(vi) Directive 2012/19/EU on waste  
electrical and electronic equipment  
(WEEE) (OJ L 197, 24.7.2012, p. 38);***

***(vii) Directive 2006/66/EC of the  
European Parliament and of the Council  
of 6 September 2006 on batteries and  
accumulators and waste batteries and  
accumulators and repealing Directive***

**91/157/EEC (OJ L 266, 26.9.2006, p. 1);**

**(viii) Directive 2011/65/EU of the European Parliament and the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88);**

**(ix) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34);**

**(x) Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC (OJ L 310, 25.11.2005, p. 10);**

**(xi) Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ L 243, 24.9.1996, p. 31);**

**(xii) Directive 2011/65/EU of the European Parliament and the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88);**

**(xiii) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30);**

**(xiv) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1);**

**(xvi) Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC**

*(OJ L 330, 10.12.2013, p. 1);*

*(xvii) Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60);*

*(xviii) Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States (OJ L 148, 19.6.1993, p. 1).*

## **Amendment 82**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 d (new)**

*Text proposed by the Commission*

*Amendment*

*Id. Provisions on marine, air and noise pollution, including:*

*(i) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1);*

*(ii) Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3);*

*(iii) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7);*

*(iv) Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1);*

*(v) Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission*

*ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22);*

*(vi) European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations (OJ L 365, 31.12.1994, p. 24);*

*(vii) Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (OJ L 285, 31.10.2009, p. 36);*

*(viii) Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1);*

*(ix) Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1);*

*(x) Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1);*

*(xi) Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub>*

*emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1);*

*(xii) Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO<sub>2</sub> emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16);*

*(xiii) Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1);*

*(xiv) Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (OJ L 161, 14.6.2006, p. 12);*

*(xv) Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 12);*

*(xvi) Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (OJ L 252, 16.9.2016, p. 53);*

*(xvii) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17);*

*(xviii) Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of*

*emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1);*

*(xix) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (OJ L 8, 13.1.2009, p. 3);*

*(xx) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1);*

*(xxi) Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 157, 9.6.2006, p. 8);*

*(xxii) Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 53);*

*(xxiii) Regulation (EU) No 546/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ L 163, 29.5.2014, p. 15);*

*(xxiv) Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ L 140, 5.6.2009, p. 88);*



*(xxv) Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52);*

*(xxvi) Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55);*

*(xxvii) Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships (OJ EU L 115, 9.5.2003, p. 1);*

*(xxviii) Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ L 189, 18.7.2002, p. 12);*

*(xxix) Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors (OJ L 162, 3.7.2000, p. 1);*

*(xxx) Directive 2002/49/EC of the European Parliament and the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ L 189, 18.7.2002, p. 12).*

## **Amendment 83**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 e (new)**

*Text proposed by the Commission*

*Amendment*

***1e. Provisions on the protection and management of water and soils,***

*including:*

- (i) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1);*
- (ii) Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84);*
- (iii) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19);*
- (iv) Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment (OJ L 135, 30.5.1991, p. 40);*
- (v) Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32);*
- (vi) Commission Directive 2003/40/EC of 16 May 2003 establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters (OJ L 126, 22.5.2003, p. 34);*
- (vii) Commission Regulation (EU) No 115/2010 of 9 February 2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters*

*(OJ L 37, 10.2.2010, p. 13);*

*(viii) Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 on the management of bathing water quality and repealing Directive 76/160/EEC (OJ L 64, 4.3.2006, p. 37);*

*(ix) Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19);*

*(x) Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (OJ L 104, 8.4.2004, p. 1);*

*(xi) Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1);*

*(xii) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19);*

*(xiii) Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27);*

*(xiv) Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p. 1).*

## Amendment 84

### Proposal for a directive

#### Annex I – part I – point E – paragraph 1 f (new)

*Text proposed by the Commission*

*Amendment*

*If. Provisions relating to the protection of nature and biodiversity:*

*(i) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7);*

*(ii) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7);*

*(iii) Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35);*

*(iv) Council Regulation (EC) No 1936/2001 of 27 September 2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish (OJ L 263, 3.10.2001, p. 1);*

*(v) Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture (OJ L 168, 28.6.2007, p. 1);*

*(vi) Council Directive 83/129/EC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom (OJ L 91, 9.4.1983, p. 30);*

*(vii) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ L 286, 31.10.2009, p. 36);*

*(viii) Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the*

*adverse impacts of bottom fishing gears (OJ L 201, 30.7.2008, p. 8);*

*(ix) Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning bycatches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (OJ L 150, 30.4.2004, p. 12);*

*(x) Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1);*

*(xi) Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006, p. 1);*

*(xii) Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006 (OJ L 242, 7.9.2012, p.13);*

*(xii) Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur (OJ L 343, 27.12.2007, p. 1);*

*(xiv) Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ L 94, 9.4.1999, p. 24);*

*(xv) Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down*

*the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23);*

*(xvi) Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347, 30.12.2005, p. 1);*

*(xvii) Commission Regulation (EU) No 1307/2014 of 8 December 2014 on defining the criteria and geographic ranges of highly biodiverse grassland for the purposes of Article 7b(3)(c) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (OJ L 351, 9.12.2014, p. 3).*

## **Amendment 85**

### **Proposal for a directive**

#### **Annex I – part I – point E – paragraph 1 g (new)**

*Text proposed by the Commission*

*Amendment*

***1g. Provisions on chemicals, including:***

***(i) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).***

## Amendment 86

### Proposal for a directive

#### Annex I – part I – point E – paragraph 1 h (new)

*Text proposed by the Commission*

*Amendment*

***1h. Provisions relating to organic products, including:***

***(i) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).***

## Amendment 87

### Proposal for a directive

#### Annex I – part I – point F – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

Rules on nuclear safety as regulated by:

Rules on nuclear safety as regulated ***in particular*** by:

## Amendment 88

### Proposal for a directive

#### Annex I – part I – point F – paragraph 1 – point i

*Text proposed by the Commission*

*Amendment*

(i) Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18);

(i) Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18) ***as well as Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42);***

## Amendment 89

### Proposal for a directive

#### Annex I – part I – point G – title

*Text proposed by the Commission*

G Article 1(a)(vii) – food and feed safety, ***animal health and animal welfare***:

*Amendment*

G Article 1(a)(vii) – food and feed safety:

## Amendment 90

### Proposal for a directive

#### Annex I – part I – point G – point 3a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Other legislative acts relevant to food and feed safety, in particular:***

***(i) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1);***

***(ii) Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms (OJ L 125, 21.5.2009, p. 75);***

***(iii) Regulation (EC) 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (OJ L 268, 18.10.2003, p. 24);***

***(iv) Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms (OJ L 287, 5.11.2003, p. 1);***

***(v) Regulation (EC) No 852/2004 of the European Parliament and of the***



*Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1);*

*(vi) Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJ L 304, 21.11.2003, p. 1);*

*(vii) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption (OJ L 300, 14.11.2009, p. 1);*

*(viii) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 91/414/EEC and 79/117/EEC (OJ L 309, 24.11.2009, p. 1);*

*(ix) Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71);*

*(x) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels (MRLs) of pesticides in or on food and feed of plant and animal origin (OJ L 70, 16.3.2005, p. 1);*

*(xi) Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);*

*(xii) Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive*

*contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);*

*(xiii) Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);*

*(xiv) Council Decision 2002/628/EC of 25 June 2002 concerning the conclusion, on behalf of the European Community, on the Cartagena Protocol on Biosafety (OJ L 201, 31.7.2002, p. 48);*

*(xv) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1);*

*(xvi) Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ L 152, 16.6.2009, p. 11);*

*(xvii) Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and*

*86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ L 125, 23.5.1996, p. 10);*

*(xviii) Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stock-farming of certain active substances having a hormonal or thyrostatic action and of beta-agonists and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ L 125, 23.5.1996, p. 3);*

*(xix) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55);*

*(xx) Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004, p. 206);*

*(xxi) Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11);*

*(xxii) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1);*

*(xxiii) Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of Salmonella and other specified food-borne zoonotic agents (OJ L 325, 12.12.2003, p. 1);*

*(xxiv) Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive*

**92/117/EEC (OJ L 325, 12.12.2003, p. 31);**

**(xxv) Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, enzymes and flavourings (OJ L 354, 31.12.2008, p. 1);**

**(xxvi) Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 (OJ L 354, 31.12.2008, p. 7);**

**(xxvii) Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16);**

**(xxviii) Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34);**

**(xxix) Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (OJ L 309, 26.11.2003, p. 1);**

**(xxx) Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (OJ L 141, 6.6.2009, p. 3);**

**(xxxi) Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants**

*in food (OJ L 37, 13.2.1993, p. 1);*

*(xxxii) Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5);*

*(xxxiii) Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ L 66, 13.3.1999, p. 16);*

*(xxxiv) Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4);*

*(xxxv) Council Directive 82/711/EEC of 18 October 1982 laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs (OJ L 297, 23.10.1982, p. 26);*

*(xxxvi) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18);*

*(xxxvii) Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet*

*replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35);*

*(xxxiii) Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1);*

*(xxxix) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development(EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487);*

*(xxxx) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 354, 28.12.2013, p. 22);*

*(xxxxi) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671);*

*(xxxxii) Regulation(EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (OJ L 268, 18.10.2003, p. 29);*

*(xxxxiii) Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (OJ L 92, 7.4.1990, p. 42);*

*(xxxxiv) Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1);*

*(xxxxv) Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (OJ L 140, 30.5.2002, p. 10);*

*(xxxxvi) Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (OJ L 229, 1.9.2009, p. 1);*

*(xxxxvii) Commission Directive 2008/38/EC of 5 March 2008 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes (OJ L 62, 6.3.2008, p. 9);*

*(xxxxviii) Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on the placing on the market and use of feed additives for animals of various species (OJ L 268, 18.10.2003, p. 1).*

## **Amendment 91**

### **Proposal for a directive**

#### **Annex I – part I – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

**4. Protection of animal welfare as**

**Ga. Article 1(a)(vii)(a) Protection of**

*regulated by:*

*animals and health and well-being of animals.*

*Provisions and standards on the protection, health and well-being of animals, as regulated in particular by:*

## **Amendment 92**

### **Proposal for a directive**

#### **Annex I – part I – point G a – points iv - xxv (new)**

*Text proposed by the Commission*

*Amendment*

(iv) *Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes (OJ L 276, 20.10.2010, p. 33).*

(v) *Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ L 224, 18.8.1990, p. 29);*

(vi) *Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ L 268, 24.9.1991, p. 56);*

(vii) *Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ L 395, 30.12.1989, p. 13);*

(viii) *Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59);*

(ix) *Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and*



*genealogical conditions for the breeding, trade in and entry into the Union of pure bred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') (OJ L 171, 29.6.2016, p. 66);*

*(x) Council Directive 2008/73/EC of 15 July 2008 simplifying procedures of listing and publishing information in the veterinary and zootechnical fields and amending Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/426/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 91/496/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, Decision 2000/258/EC and Directives 2001/89/EC, 2002/60/EC and 2005/94/EC (OJ L 219, 14.8.2008, p. 40);*

*(xi) Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC (OJ L 174, 2.7.1997, p. 1);*

*(xii) Council Directive 96/93/EC of 17 December 1996 on the certification of animals and animal products (OJ L 13, 16.1.1997, p. 28);*

*(xiii) Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8);*

*(xiv) Commission Decision 2006/968/EC of 15 December 2006 implementing Council Regulation (EC) No 21/2004 as regards guidelines and procedures for the electronic identification of ovine and caprine*

*animals (OJ L 401, 30.12.2006, p. 41);*

*(xv) Council Decision 1999/879/EC of 17 December 1999 concerning the placing on the market and administration of bovine somatotrophin (BST) and repealing Decision 90/218/EEC (OJ L 331, 23.12.1999, p. 71);*

*(xvi) Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens (OJ L 203, 3.8.1999, p. 53);*

*(xvii) Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ L 182, 12.7.2007, p. 19);*

*(xiii) Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10, 15.1.2009, p. 7);*

*(xix) Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ L 47, 18.2.2009, p. 5);*

*(xx) Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of legholdtraps or trapping methods which do not meet international humane trapping standards (OJ L 308, 9.11.1991, p. 1);*

*(xxi) Directive 2013/31/EU of the European Parliament and of the Council of 12 June 2013 amending Council Directive 92/65/EEC as regards the animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets (OJ L 178, 28.6.2013, p. 107);*

*(xxii) Regulation (EU) No 576/2013 of the European Parliament and of the*

*Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (OJ L 178, 28.6.2013, p. 1);*

*(xxiii) Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae (OJ L 192, 23.7.2010, p. 1);*

*(xxiv) Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ L 157, 10.6.1992, p. 19).*

## **Amendment 93**

### **Proposal for a directive**

#### **Annex I – part I – point H – title**

*Text proposed by the Commission*

H Article 1(a)(viii) – public health:

*Amendment*

H Article 1(a)(viii) – public health  
*and health security:*

## **Amendment 94**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 1 – introductory part**

*Text proposed by the Commission*

1. Measures setting high standards of quality and safety of organs and substances of human origin, as regulated by:

*Amendment*

1. Measures setting high standards of quality and safety of organs and substances of human origin, as regulated *in particular* by:

## **Amendment 95**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 1 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

*ia. Commission Directive (EU) 2016/1214 of 25 July 2016 amending*

*Directive 2005/62/EC as regards quality system standards and specifications for blood establishments (OJ L 199, 26.7.2016, p. 14);*

#### **Amendment 96**

##### **Proposal for a directive**

##### **Annex I – part I – point H – point 1 – point i b (new)**

*Text proposed by the Commission*

*Amendment*

*ib. Commission Directive 2005/61/EC of 30 September 2005 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards traceability requirements and notification of serious adverse reactions and events (OJ L 256, 1.10.2005, p. 32);*

#### **Amendment 97**

##### **Proposal for a directive**

##### **Annex I – part I – point H – point 1 – point i c (new)**

*Text proposed by the Commission*

*Amendment*

*ic. Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components (OJ L 91, 30.3.2004, p. 25);*

#### **Amendment 98**

##### **Proposal for a directive**

##### **Annex I – part I – point H – point 1 – point i d (new)**

*Text proposed by the Commission*

*Amendment*

*id. Commission Directive 2005/62/EC of 30 September 2005 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards*

*Community standards and specifications relating to a quality system for blood establishments (OJ L 256, 1.10.2005, p. 41);*

## **Amendment 99**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 1 – point iii a (new)**

*Text proposed by the Commission*

*Amendment*

*iiia. Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation (OJ L 207, 6.8.2010, p. 14).*

## **Amendment 100**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Measures setting high standards of quality and safety for medicinal products and devices of medical use as regulated by:

2. Measures setting high standards of quality and safety for medicinal products and devices of medical use as regulated *in particular* by:

## **Amendment 101**

### **Proposal for a directive**

#### **Annex I – part I – point H – point 5**

*Text proposed by the Commission*

*Amendment*

5. Manufacture, presentation and sale of tobacco and related products regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of

5. Manufacture, presentation and sale of tobacco and related products regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of

tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1), *and the advertising and sponsorship of tobacco products as regulated by Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ L 152, 20.6.2003, p. 16).*

## **Amendment 102**

### **Proposal for a directive Annex I – part I – point H – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. Averting alcohol-related harm and the priorities set by the European strategy to support Member States in reducing alcohol-related harm.**

## **Amendment 103**

### **Proposal for a directive Annex I – part I – point H – point 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**5b. Other legislative acts relating to public health, in particular:**

**(i) Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176);**

**(ii) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59).**

## **Amendment 104**

### **Proposal for a directive**

#### **Annex I – part I – point I – paragraph 1 – introductory part**

*Text proposed by the Commission*

Consumer rights and consumer protection  
as regulated by:

*Amendment*

Consumer rights and consumer protection  
as regulated *in particular* by:

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Protection of persons reporting on breaches of Union law
<b>References</b>	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 28.5.2018
<b>Opinion by</b> Date announced in plenary	ENVI 28.5.2018
<b>Rapporteur</b> Date appointed	Younous Omarjee 24.5.2018
<b>Discussed in committee</b>	28.6.2018
<b>Date adopted</b>	10.9.2018
<b>Result of final vote</b>	<div style="display: flex; justify-content: space-between;"> <span>+: 57</span> </div> <div style="display: flex; justify-content: space-between;"> <span>–: 5</span> </div> <div style="display: flex; justify-content: space-between;"> <span>0: 3</span> </div>
<b>Members present for the final vote</b>	Margrete Auken, Pilar Ayuso, Ivo Belet, Biljana Borzan, Lynn Boylan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Birgit Collin-Langen, Miriam Dalli, Angélique Delahaye, Mark Demesmaeker, Bas Eickhout, José Inácio Faria, Karl-Heinz Florenz, Gerben-Jan Gerbrandy, Jens Gieseke, Julie Girling, Sylvie Goddyn, Françoise Grossetête, Andrzej Grzyb, György Hölvényi, Anneli Jäätteenmäki, Karin Kadenbach, Kateřina Konečná, Urszula Krupa, Giovanni La Via, Peter Liese, Lukas Mandl, Jiří Maštálka, Susanne Melior, Miroslav Mikolášik, Rory Palmer, Massimo Paolucci, Piernicola Pedicini, Bolesław G. Piecha, John Procter, Frédérique Ries, Michèle Rivasi, Daciana Octavia Sârbu, Annie Schreijer-Pierik, Davor Škrlec, Nils Torvalds, Adina-Ioana Vălean, Damiano Zoffoli
<b>Substitutes present for the final vote</b>	Dominique Bilde, Michel Dantin, Jørn Dohrmann, Ismail Ertug, Eleonora Evi, Eleonora Forenza, Elena Gentile, Christophe Hansen, Rebecca Harms, Martin Häusling, Jan Huitema, Norbert Lins, Younous Omarjee, Carolina Punset, Christel Schaldemose
<b>Substitutes under Rule 200(2) present for the final vote</b>	Jacques Colombier, Karine Gloanec Maurin, John Howarth, Alex Mayer, Christine Revault d'Allonnes Bonnefoy



## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

57	+
ALDE	Gerben-Jan Gerbrandy, Jan Huitema, Anneli Jäätteenmäki, Carolina Punset, Frédérique Ries, Nils Torvalds
EFDD:	Evi Eleonora, Piernicola Pedicini
GUE/NGL:	Lynn Boylan, Eleonora Forenza, Kateřina Konečná, Jiří Maštálka, Younous Omarjee
PPE	Pilar Ayuso, Ivo Belet, Birgit Collin-Langen, Michel Dantin, Angélique Delahaye, José Inácio Faria, Karl-Heinz Florenz, Jens Gieseke, Julie Girling, Françoise Grossetête, Andrzej Grzyb, Christophe Hansen, György Hölvényi, Giovanni La Via, Peter Liese, Norbert Lins, Lukas Mandl, Miroslav Mikolášik, Annie Schreijer-Pierik, Adina-Ioana Vălean
S&D:	Biljana Borzan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Miriam Dalli, Ismail Ertug, Elena Gentile, Karine Gloanec Maurin, John Howarth, Karin Kadenbach, Alex Mayer, Susanne Melior, Rory Palmer, Massimo Paolucci, Christine Revault d'Allonnes Bonnefoy, Christel Schaldemose, Daciana Octavia Sârbu, Damiano Zoffoli
VERTS/ALE:	Margrete Auken, Bas Eickhout, Rebecca Harms, Martin Häusling, Michèle Rivasi, Davor Škrlec

5	-
ECR	Mark Demesmaecker, Jørn Dohrmann, Urszula Krupa, Bolesław G. Piecha, John Procter

3	0
ENF	Dominique Bilde, Jacques Colombier, Sylvie Goddyn

Key to symbols:

+ : in favour

- : against

0 : abstention

22.10.2018

## **OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION**

for the Committee on Legal Affairs

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

Rapporteur for opinion: Curzio Maltese

### **SHORT JUSTIFICATION**

Whistle-blowers have played a leading role in nearly all the major scandals that have come to light over the last few years. Thanks to their courage in coming forward and to the zeal of investigative journalists, the public has been alerted to cases of fraud committed on a massive scale at the expense of taxpayers and consumers, as well as civil rights violations and threats to the life and health of millions. In certain countries, however, instead of being recognised and protected by the community whose interests they were seeking to uphold, it is the whistle-blowers, rather than the powerful wrongdoers they have exposed, who are actually ending up in the dock. In other cases, they have been forced by legal contradictions and shortcomings to engage in long and complex court proceedings.

In the wake of recent scandals, the new EU directive proposed by the Commission accordingly seeks the adoption of a joint set of strong and clear legislative framework provisions ensuring adequate protection for whistle-blowers throughout the Union.

To achieve this, it is necessary to establish the legal bases, the principles and the priorities from which the Commission can and must draw its inspiration. Why is joint European framework necessary when it comes to laws protecting whistle-blowers?

It is no secret that, in many cases, whistle-blowers' revelations have shed light on cases of fraud at the expense of the Union, avoiding massive outlays of public funds, not to mention market distortions. However, financial interest cannot be the only motive, just as it was not the only motive for whistle-blowers and journalists. None of them, in the face of reprisals, retaliation or intimidation, risked their careers or even, in certain cases, their lives simply in order to save money for the the Union.

Other values are at stake here. Here, as elsewhere, it is the European Courts that help us find

our way. In its rulings on whistle-blowing cases, the European Court of Human Rights refers to the freedom of information guaranteed under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which upholds the freedom ‘to receive and impart information and ideas without interference by public authority and regardless of frontiers.’ However, this is touched on only marginally in the Commission proposal for a directive.

If, on the other hand, the fundamental right to information is upheld as a core precept, it suggests a scale of values and priorities with which the public can readily identify, giving paramount importance to defence of the public interest, the very principle that that inspired the actions of whistle-blowers and journalists, who therefore deserve every protection. Therefore there is little point in limiting protection to the workplace, as if threats and risks that are just as serious, if not more so, could not occur outside it. It is equally futile to rule on which informants and whistle-blowers are entitled to a greater or lesser degree of protection on the basis of highly questionable sets of criteria. Under the Commission proposal, a good whistle-blower should inform his or her own company first of all and only after that the institutional watchdog bodies, while going public should be the last resort after every other option has failed. Rather than protecting whistle-blowers, this seems a sure-fire way of discouraging them. The rapporteur has sought to guarantee the fundamental right to information by ensuring more comprehensive protection for informants and removing the obstacles to disclosure.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a directive

#### Recital -1 (new)

*Text proposed by the Commission*

*Amendment*

***(-1) Whistleblowing guarantees freedom of expression and information, a fundamental value of the European Union as enshrined in the Charter of Fundamental Rights of the European Union; whistleblowers often take on high personal risk and the absence of effective protection can discourage potential whistleblowers from reporting their concerns or suspicions for fear of unfair treatment, including retaliation,***

*discrimination or disadvantage, which ultimately reduces the likelihood that wrongdoing is uncovered and penalised.*

## Amendment 2

### 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 threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in exposing, preventing breaches of the law and *revealing dangers that may harm the public interest.*

## Amendment 3

### 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 by whistleblowers are one upstream component of enforcement of Union law *and policies*: they feed national and Union enforcement systems with information leading to effective detection, investigation and prosecution of breaches of Union law, *thus enhancing transparency and accountability.*

## Amendment 4

### Proposal for a directive

## Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

**(2a) All major scandals that have been made public since 2014, like LuxLeaks and Panama Papers, are thanks to whistleblowers.**

## Amendment 5

### Proposal for a directive

#### Recital 3

*Text proposed by the Commission*

*Amendment*

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

(3) Breaches of Union law may cause serious harm to the public interest, in the sense of creating significant risks for the welfare of society. ***As*** whistleblowers are ***usually*** in a privileged position ***to disclose*** breaches, it is necessary, ***in order*** to enhance enforcement ***of Union law, to guarantee safe and effective disclosure of the information and to ensure*** effective protection of whistleblowers from retaliation.

## Amendment 6

### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

*Amendment*

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. ***The consequences*** of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient protection ***in one Member State not only negatively impacts*** on the functioning of EU policies ***in that Member State but can also spill over into other Member States***

(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. ***Cases*** of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient ***or different*** protection ***levels among Member States can have a negative impact*** on the functioning of Union policies.

*and the Union as a whole.*

## **Amendment 7**

### **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 standards ensuring effective whistleblower protection should apply, *particularly* in those acts and policy areas where i) there is *a potential threat to the public interest; ii) there is a* need to strengthen enforcement; *iii) under-reporting by whistleblowers is a* key factor affecting enforcement.

## **Amendment 8**

### **Proposal for a directive Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*(5a) Whistleblower protection should be enforced to foster an environment conducive to freedom of information and of the media; this requires firstly that journalists and their sources, including whistleblowers, be given effective protection against any violation of their safety and their mental and physical integrity, and that any attempt to intimidate them or to put any undue pressure on their independence be prevented.*

## **Amendment 9**

### **Proposal for a directive Recital 6**

*Text proposed by the Commission*

*Amendment*

(6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market.

(6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market. ***In most of the cases such breaches place the trust of citizens in public institutions under a serious threat, thus jeopardising the proper functioning of democracy.***

## Amendment 10

### 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 ***are acting under the right of freedom of information and*** 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), ***which encompasses the right to receive and impart information, as well as*** media freedom and pluralism.

## Amendment 11

### 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 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.***

## Amendment 12

### Proposal for a directive

#### Recital 26

##### *Text proposed by the Commission*

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union<sup>52</sup>, 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

##### *Amendment*

(24) Persons need specific - legal, ***economic, social and psychological*** - protection where they acquire the information they report and therefore run the risk of retaliation (for instance, for breaching the duty of confidentiality or loyalty). The underlying reason for providing them with protection is, ***amongst others***, their position of vulnerability vis-à-vis the person on whom they de facto depend for work. ***Furthermore, the protection should be granted to defend citizens reporting breaches of law in order to safeguard the public interest and proper functioning of democracy.***

##### *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 Union<sup>52</sup>, 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, ***paid trainees*** 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



against unfair treatment are often difficult to apply.

---

<sup>52</sup> 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.

standard protections against unfair treatment are often difficult to apply.

---

<sup>52</sup> 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.

## Amendment 13

### Proposal for a directive Recital 27

#### *Text proposed by the Commission*

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

#### *Amendment*

(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 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

intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

#### **Amendment 14**

##### **Proposal for a directive Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

***(27a) Protection should also extend to people facilitating the reporting, intermediaries and investigative journalists who, with their activities, guarantee the effective disclosure of the potential or occurred breach.***

#### **Amendment 15**

##### **Proposal for a directive Recital 28**

*Text proposed by the Commission*

*Amendment*

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation.

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches ***or for supporting whistleblowers reporting***. Retaliation against volunteers and unpaid trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation.

## Amendment 16

### 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.

## Amendment 17

### Proposal for a directive Recital 30

#### *Text proposed by the Commission*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of *information which is already in the public domain or of* unsubstantiated rumours and hearsay.

#### *Amendment*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions *as well as to persons complementing information to issues already in the public domain*. At the same time, protection should not apply to the reporting of unsubstantiated rumours and hearsay.

## Amendment 18

### 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) 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 which causes them detriment. ***Once someone is recognised as a whistleblower, measures, including legal protection, should be taken to protect him or her, to bring to an end any retaliation measures taken against him or her, and to grant the whistleblower full compensation for the prejudice and damage incurred.***

**Amendment 19**

**Proposal for a directive  
Recital 32 a (new)**

*Text proposed by the Commission*

*Amendment*

***(32a) Potential whistleblowers should seek wherever possible to inform internal reporting systems or agencies but wherever they deem that such course of action will be inadequate, they should be free to decide whether they first inform such internal reporting systems or agencies or whether the public should be informed directly, for example through the media. Whistleblowers should be protected no matter what reporting channel they choose.***

**Amendment 20**

**Proposal for a directive  
Recital 33**

*Text proposed by the Commission*

*Amendment*

(33) Whistleblowers are, ***in particular***, important sources for ***investigative*** journalists. Providing effective protection

(33) Whistleblowers are important sources for journalists, ***therefore it is essential to create a safe environment***,

*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.

providing *them and those assisting them* effective protection from retaliation. In this respect, protection of whistleblowers is crucial *to ensure quality* journalism, *which ultimately contributes to foster a culture of accountability and transparency* in democratic societies.

## Amendment 21

### 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. These may be *judicial authorities*, regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent *should be independent and* have the necessary capacities and powers to *impartially and objectively* 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 22

### Proposal for a directive Recital 37

#### *Text proposed by the Commission*

(37) For the effective detection and prevention of breaches of Union law it *is*

#### *Amendment*

(37) For the effective detection and prevention of breaches of Union law it

**vital** that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

**could in some cases be appropriate** that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

## Amendment 23

### Proposal for a directive Recital 40

*Text proposed by the Commission*

(40) ***It should be clear that, in the case of private legal entities which do not provide for internal reporting channels,*** reporting persons should ***be able*** to report directly externally to ***the*** competent authorities ***and*** such persons should enjoy the protection against retaliation provided by this Directive.

*Amendment*

(40) Reporting persons should ***always have the option*** to report directly externally, ***including*** to competent authorities ***or the media***. Such persons should enjoy the protection against retaliation provided by this Directive.

## Amendment 24

### Proposal for a directive Recital 42

*Text proposed by the Commission*

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

*Amendment*

(42) ***Effective protection should include the safeguard*** of the ***whistleblower's*** identity. ***This should be the minimum requirement of any disclosure, if the whistleblower wishes to remain anonymous.*** It is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and

complaint box(es), which do not guarantee confidentiality of the identity of the reporting person.

## Amendment 25

### Proposal for a directive Recital 43

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 26

### Proposal for a directive Recital 45

#### *Text proposed by the Commission*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest and independence. ***In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.***

#### *Amendment*

(45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case ***they should be designated in close collaboration with employees or employee representatives and their composition, function and working procedures*** should ensure absence of conflict of interest and independence.

## Amendment 27

### Proposal for a directive Recital 46

#### *Text proposed by the Commission*

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

#### *Amendment*

(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further *unjustified* reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow up to the report (for instance, closure based on lack of sufficient evidence or other grounds, launch of an internal enquiry and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total *two* months. Where the appropriate *follow-up* is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect.

## Amendment 28

### Proposal for a directive Recital 47

#### *Text proposed by the Commission*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities *having in place internal reporting procedures shall* provide information on *these* procedures as well as

#### *Amendment*

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how, *via which channel* and when to report. Private and public entities *should* provide information on *internal reporting* procedures as well as on



on procedures to report externally *to relevant competent authorities*. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the *entity* through their work-related activities, *such as service-providers, distributors, suppliers and business partners*. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

## Amendment 29

### Proposal for a directive Recital 48

#### *Text proposed by the Commission*

(48) Effective detection and prevention of breaches of Union law requires ensuring that potential whistleblowers can easily and in full confidentiality bring the information they possess to the attention of the relevant competent authorities which are able to investigate *and* to remedy the problem, where possible.

## Amendment 30

### Proposal for a directive Recital 50

#### *Text proposed by the Commission*

(50) Follow up and feedback should take place within *a reasonable* timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report, *as well as to avoid unnecessary public disclosures*. Such timeframe should not exceed *three* months, but could be extended to *six* months, where

procedures to report externally. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the *relevant information on potential or occurred breaches* through their work-related activities. For instance, such information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

#### *Amendment*

(48) Effective detection and prevention of breaches of Union law requires ensuring that potential whistleblowers can easily and in full confidentiality bring the information they possess to the attention of the *public and of* relevant competent authorities which are able to investigate *and/or* to remedy the problem, where possible.

#### *Amendment*

(50) Follow up and feedback should take place within *the shortest possible* timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report. Such timeframe should not exceed *two* months, but could be extended to *four* months, where necessary due to the specific circumstances

necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.

## Amendment 31

### Proposal for a directive Recital 53

#### *Text proposed by the Commission*

(53) Dedicated staff members of the competent authorities, who are professionally trained, including on applicable data protection rules, would be necessary in order to handle reports and to ensure communication with the reporting person, as well as following up on the report in a suitable manner.

#### *Amendment*

(53) Dedicated staff members of the competent authorities, who are professionally trained ***on a regular basis***, including on applicable data protection rules, would be necessary in order to ***receive and*** handle reports and to ensure communication with the reporting person, as well as following up on the report in a suitable manner.

## Amendment 32

### Proposal for a directive Recital 54

#### *Text proposed by the Commission*

(54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.

#### *Amendment*

(54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.  
***Potential whistleblowers should always be able to decide themselves whether to use internal or external reporting channels or whether they directly reach out to the***

*public, provided that whistleblowers should in their discretion determine before resorting to external channels whether internal reporting mechanisms would be effective enough to provide a remedy against the breach that would be the subject of their report.*

## Amendment 33

### Proposal for a directive Recital 60 a (new)

*Text proposed by the Commission*

*Amendment*

*(60a) It is essential to safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection under this Directive.*

## Amendment 34

### Proposal for a directive Recital 61

*Text proposed by the Commission*

*Amendment*

(61) *The requirement of a tiered use of reporting channels, as a general rule*, is necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest *as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing* the reporting person *to* choose the most appropriate channel depending on the individual circumstances of the case. *Moreover, it is necessary to protect public disclosures taking into account democratic principles such as transparency and* accountability, and fundamental rights such as freedom of expression and media freedom, whilst

(61) *It* is necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest. The reporting person *should* choose the most appropriate channel depending on the individual circumstances of the case. Transparency, accountability and fundamental rights such as freedom of expression and media freedom *must be guaranteed*, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights.

balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights<sup>57</sup>.

---

<sup>57</sup> One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure; see, for instance, *Guja v. Moldova* [GC], no 14277/04, ECHR 2008.

---

<sup>57</sup> One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure; see, for instance, *Guja v. Moldova* [GC], no 14277/04, ECHR 2008.

## Amendment 35

### Proposal for a directive Recital 62

#### *Text proposed by the Commission*

(62) As a rule, reporting persons should ***first*** use the internal channels at their disposal ***and report to their employer.*** ***However, it may be the*** case that internal channels ***do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry).***

#### *Amendment*

(62) ***Without prejudice to the other provisions of this Directive,*** as a ***general*** rule, reporting persons should use the internal channels at their disposal. ***In*** case that internal channels ***are deemed inadequate by the reporting persons, they should always be able to use external channels or directly reach out to the public.***

## Amendment 36

### 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 *and people who assist them in disclosing breaches or potential breaches* 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 *or people bound by bonds of affection or friendship with the reporting person, colleagues* or customer/recipient of services and workers' representatives *or other persons and organisations* who have provided support to the reporting person. *There should be sanctions for harassing whistleblowers, or their family or colleagues as a result of a disclosure.*

## Amendment 37

### Proposal for a directive

#### Recital 67

##### *Text proposed by the Commission*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be

##### *Amendment*

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be

discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available *on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules* (*‘signposting’*). Access to such advice can help ensure that reports are made through *the appropriate* channels, *in a responsible manner* and that breaches and wrongdoings are detected in a timely manner or even prevented.

## Amendment 38

### Proposal for a directive Recital 73

#### *Text proposed by the Commission*

(73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Interim relief can be in particular necessary in order to stop threats, attempts or continuing acts of retaliation, such as harassment at the workplace, or to prevent forms of retaliation such as dismissal, which might be difficult to reverse after the lapse of lengthy periods and which can ruin financially the individual — a perspective which can seriously discourage potential whistleblowers.

## Amendment 39

### Proposal for a directive Recital 75

discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available. Access to such advice can help ensure that reports are made through *safe and confidential* channels and that breaches and wrongdoings are detected in a timely manner or even prevented.

#### *Amendment*

(73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Interim relief can be in particular necessary in order to stop threats, attempts or continuing acts of retaliation, such as harassment *outside and* at the workplace, or to prevent forms of retaliation such as *verbal abuse or physical violence*, dismissal, which might be difficult to reverse after the lapse of lengthy periods and which can ruin financially the individual — a perspective which can seriously discourage potential whistleblowers.

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need might be key, in certain cases, for the effective enforcement of their rights to protection.

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>59</sup> and more generally support to those who are in serious financial need might be key, in certain cases, for the effective enforcement of their rights to protection.

***Whistleblowers should also be able to claim compensation for any harassment suffered or the loss of current or future livelihood, if the damage occurred in retaliation.***

---

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

---

<sup>59</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

## **Amendment 40**

### **Proposal for a directive Recital 76**

(76) The rights of the concerned person should be protected in order to avoid reputational damages or other negative consequences. Furthermore, the rights of defence and access to remedies of the concerned person should be fully respected at every stage of the procedure following

(76) The rights of the concerned person should be protected in order to avoid reputational damages or other negative consequences. Furthermore, the rights of defence and access to remedies of the concerned person should be fully respected at every stage of the procedure following

the report, in accordance with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. Member States should ensure the right of defence of the concerned person, including the right to access to the file, the right to be heard and the right to seek effective remedy against a decision concerning the concerned person under the applicable procedures set out in national law in the context of investigations or subsequent judicial proceedings.

the report, in accordance with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. Member States should ensure the right of defence of the concerned person, including the right to access to the file, the right to be heard and the right to seek effective remedy against a decision concerning the concerned person under the applicable procedures set out in national law in the context of investigations or subsequent judicial proceedings, ***and to this end suitable measures should be employed to make individuals and civil society more aware of this.***

## **Amendment 41**

### **Proposal for a directive Recital 78**

#### *Text proposed by the Commission*

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who make a report or disclosure demonstrated to be knowingly false are necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.

#### *Amendment*

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who make a report or disclosure demonstrated to be ***deliberately*** ***and*** knowingly false are necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.

## **Amendment 42**

### **Proposal for a directive Recital 85 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***(85a) This Directive is a new standard for protecting the rights of persons***



*reporting on breaches of Union law and should serve as an example for the candidate countries, associated countries and other countries that have committed to bring their legislation closer to the European acquis, especially in the context of reporting on abuse of Union funding and Union macro-financial assistance provided to these countries.*

#### **Amendment 43**

##### **Proposal for a directive Recital 85 b (new)**

*Text proposed by the Commission*

*Amendment*

*(85b) Particular regard should be given to the Charter of Fundamental Rights of the European Union, in particular Article 11 on Freedom of expression and information, to the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests, and to the European Parliament resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies.*

#### **Amendment 44**

##### **Proposal for a directive Article 1**

*Text proposed by the Commission*

*Amendment*

Article 1

Article 1

Material scope

Material scope

1. With a view to enhancing ***the enforcement*** of Union law and policies ***in specific areas***, this Directive lays down

1. With a view to ***protecting the public interest, safeguarding freedom of information and expression and to***

common minimum standards for the protection of persons ***reporting on the following*** unlawful ***activities or*** abuse of law:

a) breaches falling within the scope of the Union acts set out in the Annex (Part I and Part II) as regards the following areas:

- (i) public procurement;
- (ii) financial services, prevention of money laundering and terrorist financing;
- (iii) product safety;
- (iv) transport safety;
- (v) protection of the environment;
- (vi) nuclear safety;
- (vii) food and feed safety, animal health and welfare;
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems.

b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No

enhancing ***the enforcement*** of Union law and policies, this Directive lays down common minimum standards for the protection of persons ***disclosing information related to breaches of the law or any*** unlawful ***activity and*** abuse of law ***which undermine or endanger the public interest in any field of Union competence, including:***

***-a) fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, and more specifically freedom of expression and information as referred to in Article 11 of the Charter and case-law based on that Article;***

a) breaches falling within the scope of the Union ***legislation, for example those*** acts set out in the Annex (Part I and Part II) as regards the following areas:

- (i) public procurement;
- (ii) financial services, prevention of money laundering and terrorist financing;
- (iii) product safety;
- (iv) transport safety;
- (v) protection of the environment;
- (vi) nuclear safety;
- (vii) food and feed safety, animal health and welfare;
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems.

b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;

c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No

883/2013;

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.

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.

883/2013;

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.

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 45

### Proposal for a directive Article 2

*Text proposed by the Commission*

#### Article 2

##### Personal scope

1. This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context including, at least, the following:

- a) persons having the status of worker, with the meaning of Article 45 TFEU;
- b) persons having the status of self-employed, with the meaning of Article 49 TFEU;
- c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well

*Amendment*

#### Article 2

##### Personal scope

1. This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context including, at least the following:

- a) persons having the status of worker, with the meaning of Article 45 TFEU, **as well as former workers;**
- b) persons having the status of self-employed, with the meaning of Article 49 TFEU;
- c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well

as volunteers and unpaid trainees;

d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.

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.

as volunteers and unpaid trainees;

d) any persons working under the supervision and direction of contractors, subcontractors and suppliers;

*da) civil servants;*

*db) European Union staff members, as defined within the EU Staff Regulation.*

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.

*2a. This Directive shall also apply to intermediaries facilitating the reporting and/or the disclosure, including journalists.*

## Amendment 46

### Proposal for a directive

#### Article 3

*Text proposed by the Commission*

#### Article 3

##### Definitions

For the purposes of this Directive, the following definitions shall apply:

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

(2) ‘unlawful activities’ means acts or omissions contrary to Union law;

(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;

*Amendment*

#### Article 3

##### Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) ‘breaches’ means actual or potential unlawful activities or abuse of law ***or other forms of misconduct which undermine or endanger the public interest in any field of Union competence;***

(2) ‘unlawful activities’ means acts or omissions contrary to Union law;

(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;

(4) ‘information on breaches’ means evidence about actual breaches as well as reasonable suspicions about potential breaches which have not yet materialised;

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to *occur in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work*;

(6) ‘internal reporting’ means provision of information on breaches within a public or private legal entity;

(7) ‘external reporting’ means provision of information on breaches to the competent authorities;

(8) ‘disclosure’ means making information on breaches acquired within the work-related context available to the public domain;

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

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

(11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is associated;

(12) ‘retaliation’ means any threatened

(4) ‘information on breaches’ means evidence, *confidential or otherwise*, about actual breaches as well as reasonable suspicions about potential breaches which have not yet materialised;

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur;

(6) ‘internal reporting’ means provision of information on breaches within a public or private legal entity;

(7) ‘external reporting’ means provision of information on breaches to the competent authorities;

(8) ‘disclosure’ means making information on breaches acquired within the work-related context available to the public domain *by revealing them to media, civil society organizations or another body not falling under (14) of this Article*;

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

*(9a) ‘intermediary’ means a natural or legal person who facilitates the report or disclosure;*

(10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches;

(11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is *or was* associated;

(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;

(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;

(14) ‘competent authority’ means any ***national*** authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

or actual act or omission prompted by the internal or external reporting ***or a public disclosure*** which causes or may cause unjustified ***direct or indirect*** detriment to the reporting person, ***to his or her colleagues, personal contacts or to persons facilitating the reporting and disclosure***;

(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;

(14) ‘competent authority’ means any authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.

## Amendment 47

### Proposal for a directive Article 4

*Text proposed by the Commission*

#### Article 4

***Obligation to establish internal*** channels and procedures for reporting and follow-up of reports

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, if appropriate.

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by other persons who are in contact with the

*Amendment*

#### Article 4

***Internal*** channels and procedures for reporting and follow-up of reports

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, if appropriate.

2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by other persons who are in contact with the

entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d), but the use of internal channels for reporting shall not be mandatory for these categories of persons.

3. The legal entities in the private sector referred to in paragraph 1 are the following:

- a) private legal entities with 50 or more employees;
- b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10 million or more;
- c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of **risk**, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003<sup>62</sup>, other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

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

- a) state administration;
- b) regional administration and departments;
- c) municipalities with more than **10 000** inhabitants;

entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d), but the use of internal channels for reporting shall not be mandatory for these categories of persons.

3. The legal entities in the private sector referred to in paragraph 1 are the following:

- a) private legal entities with 50 or more employees;
- b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10 million or more;
- c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of **relevance and risk for the public**, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003<sup>62</sup>, other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

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

- a) state administration;
- b) regional administration and departments;
- c) municipalities with more than **5000** inhabitants;
- ca) **private entities providing a**

d) other entities governed by public law.

*public service or under public control;*

d) other entities governed by public law.

**6a. European Union institutions, agencies and bodies shall also establish channels and procedures for reporting and following up on reports, following consultations with social partners.**

---

<sup>62</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

---

<sup>62</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

## Amendment 48

### Proposal for a directive Article 5

*Text proposed by the Commission*

#### Article 5

Procedures for internal reporting and follow-up of reports

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:
  - a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised **staff members**;
  - b) **the** designation of a person **or** department competent for following up on the reports;
  - c) diligent follow up to the report by the designated person or department;
  - d) a reasonable timeframe, not exceeding **three** months following the report, to provide feedback to the reporting

*Amendment*

#### Article 5

Procedures for internal reporting and follow-up of reports

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:
  - a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person, **allows for anonymous disclosures also in the digital environment** and prevents access to non-authorised **persons**;
  - b) designation, **in close collaboration with employees and employee representatives**, of a person or department competent for following up on the reports;
  - c) diligent follow up to the report by the designated person or department;
  - d) a reasonable timeframe, not exceeding **two** months following the report, to provide feedback to the reporting person



person about the follow-up to the report;

e) clear and easily accessible information regarding the procedures and information on how *and under what conditions reports can be made* externally *to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.*

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all of the following ways:

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;

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

Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.

## Amendment 49

### Proposal for a directive Article 6

*Text proposed by the Commission*

#### Article 6

Obligation to establish external reporting

about the follow-up to the report;

e) clear and easily accessible information regarding the procedures and information on how *to report* externally

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all of the following ways:

(a) written reports in electronic or paper format, *including options for anonymous disclosures, as well as disclosures employing cryptographic methods* and/or oral report through telephone lines, whether recorded or unrecorded;

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

Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.

*Amendment*

#### Article 6

Obligation to establish external reporting

channels and to follow up on reports

1. Member States shall designate the authorities competent to receive and handle reports.

2. Member States shall ensure that the competent authorities:

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;

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

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

channels and to follow up on reports

1. Member States shall designate the authorities competent to receive and handle reports, ***which must be independent and have sufficient power and adequate financial and human resources to operate effectively.***

***1a. Member States are also to ensure that persons requiring protection as whistle blowers will be entitled to the right of appeal before the Courts and that under no circumstances can the authority tasked to grant such status or protection have an actual or potential conflict of interest with regard to whether or not to grant such status or protection.***

2. Member States shall ensure that the competent authorities:

a) establish independent and autonomous, ***clear and transparent*** external reporting channels, which are both secure and ensure confidentiality ***and allow for anonymous disclosures***, for receiving and ***processing*** information provided by the reporting person ***or intermediaries***;

***aa) are independent and dispose of adequately qualified and trained staff and appropriate funding;***

***ab) guarantee advice and legal support for reporting persons and intermediaries;***

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

c) transmit, ***while further ensuring confidentiality and/or anonymity of the reporting person***, the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.

***ca) raise public awareness so as to***

3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.

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.

*ensure the report of breaches;*

*cb) collect and publish data and information regarding the functioning of whistleblowing laws and frameworks.*

3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.

*3a. Member States shall ensure that competent authorities are entitled to receive, investigate and address complaints of unfair treatment and improper investigation on persons reporting the breaches.*

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.

## Amendment 50

### Proposal for a directive Article 7

*Text proposed by the Commission*

#### Article 7

Design of external reporting channels

1. Dedicated external reporting channels shall be considered independent **and** autonomous, if they meet all of the following criteria:

a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its

*Amendment*

#### Article 7

Design of external reporting channels

1. Dedicated external reporting channels shall be considered independent, autonomous, **clear and transparent** if they meet all of the following criteria:

a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its

ordinary course of business;

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*;

c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.

2. The dedicated reporting channels shall allow for reporting in at least all of the following ways:

a) written report in electronic or paper format;

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

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

3. Competent authorities shall ensure that a report received by means other than dedicated reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated staff members of the competent authority by using dedicated communication channels.

4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

ordinary course of business;

b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the *identity and/or the anonymity* of the *reporting person or intermediaries*;

*ba) they prevent access to non-authorised persons;*

c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations;

*ca) they are easily accessible also to people with disabilities.*

2. The dedicated reporting channels shall allow for reporting in at least all of the following ways:

a) written report in electronic or paper format, *including options for anonymous disclosures, as well as disclosures employing cryptographic methods*;

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

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

3. Competent authorities shall ensure that a report received by means other than dedicated reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated staff members of the competent authority by using dedicated communication channels.

4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.

## Amendment 51

### Proposal for a directive

#### Article 8

*Text proposed by the Commission*

##### Article 8

###### Dedicated staff members

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.
2. Dedicated staff members shall exercise the following functions:
  - a) providing any interested person with information on the procedures for reporting;
  - b) receiving and following-up reports;
  - c) maintaining contact with the reporting person for the purpose of informing **the reporting person** of the progress and the outcome of the investigation.

*Amendment*

##### Article 8

###### Dedicated staff members

1. Member States shall ensure that competent authorities have staff members dedicated to handling reports. Dedicated staff members shall receive specific **and regular** training for the purposes of handling reports.
2. Dedicated staff members shall exercise the following functions:
  - a) providing any interested person with information on the procedures for reporting **and on the protection to which he or she is entitled;**
  - b) receiving and following-up reports;
  - c) maintaining contact with the reporting person **or the intermediary** for the purpose of informing **them** of the progress and the outcome of the investigation.

## Amendment 52

### Proposal for a directive

#### Article 9

*Text proposed by the Commission*

##### Article 9

###### Procedures applicable to external reporting

1. The procedures applicable to external reporting shall provide for the following:
  - a) the manner in which the competent authority may require the reporting person to clarify the information reported or to provide additional information that is

*Amendment*

##### Article 9

###### Procedures applicable to external reporting

1. The procedures applicable to external reporting shall provide for the following:
  - a) the manner in which the competent authority may require the reporting person **or the intermediary** to clarify the information reported or to provide

available to the reporting person;

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

c) the confidentiality **regime** applicable to reports, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed.

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.

additional information that is available to the reporting person;

**aa) the manner in which the reporting person may request to clarify the information reported or provide additional information;**

b) a reasonable timeframe, not exceeding **two** months or **four** months in duly justified cases, for giving **updates** to the reporting person **on the actual and forthcoming status** of the report **as well as a description of the form** and content of this feed-back;

c) the confidentiality **measures** applicable to reports, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed. **When identifying information must be disclosed, reporting persons and intermediaries should be given notice sufficiently in advance and potentially provided with additional protection measures.**

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons **or intermediaries**.

## 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 **existing framework** under which reporting persons **or intermediaries** qualify for protection under this Directive;

## Amendment 54

### Proposal for a directive

#### Article 10 – paragraph 1 – point b – point i

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 55

### Proposal for a directive

#### Article 11 – paragraph 2

*Text proposed by the Commission*

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless **the reporting person** explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

*Amendment*

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person **or intermediaries**, unless **they** explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's **or intermediaries'** identity.

## Amendment 56

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent authority shall have the right to document the oral reporting in one of the following ways:

*Amendment*

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person ***or the intermediary***, the competent authority shall have the right to document the oral reporting in one of the following ways:

**Amendment 57**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

The competent authority shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

*Amendment*

The competent authority shall offer the possibility to the reporting person ***or intermediary*** to check, rectify and agree the transcript of the call by signing it.

**Amendment 58**

**Proposal for a directive**

**Article 11 – paragraph 4**

*Text proposed by the Commission*

4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

*Amendment*

4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent authority shall offer the possibility to the reporting person ***or intermediary*** to check, rectify and agree with the minutes of the call by signing them.

**Amendment 59**

**Proposal for a directive**

**Article 11 – paragraph 5 – subparagraph 1 – introductory part**



*Text proposed by the Commission*

Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the meeting in one of the following ways:

*Amendment*

Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities shall ensure, subject to the consent of the reporting person ***or intermediary***, that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the meeting in one of the following ways:

**Amendment 60**

**Proposal for a directive**

**Article 11 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

*Amendment*

The competent authority shall offer the possibility to the reporting person ***or intermediaries*** to check, rectify and agree with the minutes of the meeting by signing them.

**Amendment 61**

**Proposal for a directive**

**Article 13**

*Text proposed by the Commission*

Article 13

***Conditions*** for the protection of reporting persons

***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*

Article 13

***Framework*** for the protection of reporting persons ***and intermediaries***

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

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

- a) he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;**
- b) internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;**
- c) the use of internal reporting channels was not mandatory for the reporting person, in accordance with Article 4(2);**
- d) he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report;**
- e) he or she had reasonable grounds to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;**
- f) he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.**

**3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported externally in accordance with the conditions set out in paragraph 2.**

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

- a) he or she first reported internally and/or externally in accordance with**

*Chapters II and III and paragraph 2 of this Article, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or*

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

## Amendment 62

### Proposal for a directive Article 14

*Text proposed by the Commission*

#### Article 14

Prohibition of retaliation against reporting persons

Member States shall take the necessary measures to prohibit any *form of* retaliation, *whether direct or indirect, against reporting persons meeting the conditions set out in Article 13, including in particular in the form of:*

- a) suspension, lay-off, dismissal or equivalent measures;
- b) demotion or withholding of promotion;
- c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- d) withholding of training;
- e) negative performance assessment or

*Amendment*

#### Article 14

Prohibition of retaliation against reporting persons *and intermediaries*

Member States shall take the necessary measures to prohibit any *threatened, attempted or implemented action that could undermine the exercise of rights protected by the present Directive. This includes, but is not limited to* retaliation measures such as:

*-a) harassment, physical and verbal violence, including coercion, intimidation or ostracism;*

- a) suspension, lay-off, dismissal or equivalent measures;
- b) demotion or withholding of promotion;
- c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- d) withholding of training;
- e) negative performance assessment or

employment reference;

f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;

g) ***coercion, intimidation, harassment or ostracism at the workplace;***

h) discrimination, disadvantage or unfair treatment;

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

j) failure to renew or early termination of the temporary employment contract;

k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;

l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;

m) early termination or cancellation of contract for goods or services;

n) cancellation of a licence or permit.

employment reference;

f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;

h) discrimination, disadvantage or unfair treatment;

i) failure to convert ***an internship or*** a temporary employment contract into a permanent one;

j) failure to renew or early termination of the temporary employment, ***voluntary work*** contract;

k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;

l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;

m) early termination or cancellation of contract for goods or services;

n) cancellation of a licence or permit.

## Amendment 63

### Proposal for a directive Article 15

*Text proposed by the Commission*

#### Article 15

Measures for the protection of reporting persons against retaliation

1. Member States shall take the necessary measures to ensure the protection of reporting persons ***meeting the conditions*** set out in Article 13 against retaliation. Such ***measures shall*** include, in particular, those set out in paragraphs 2 to

*Amendment*

#### Article 15

Measures for the protection of reporting persons ***and intermediaries*** against retaliation

1. Member States shall take the necessary measures to ensure the protection of reporting persons ***and intermediaries according to the framework*** set out in Article 13 against retaliation. Such ***measures shall*** include, in

8.

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.

3. Reporting persons shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

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.

5. In judicial proceedings relating to a detriment suffered by the reporting person, ***and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure***, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report but was exclusively based on duly justified grounds.

6. Reporting persons shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the national framework

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943,

particular, those set out in paragraphs 2 to 8.

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.

3. Reporting persons ***and intermediaries*** shall have access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.

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.

5. In judicial proceedings relating to a detriment suffered by the reporting person ***or the intermediary***, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report ***or public disclosure*** but was exclusively based on duly justified grounds.

6. Reporting persons ***and intermediaries*** shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the national framework.

7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943,

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

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 Council<sup>1a</sup>, 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.

---

<sup>1a</sup> 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).

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

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 Council<sup>1a</sup>, 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.

---

<sup>1a</sup> 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).

## Amendment 64

### Proposal for a directive Article 16 – paragraph 2

#### *Text proposed by the Commission*

2. Where the identity of the concerned persons is not known to the public, competent authorities shall ensure that their identity is protected for as long as the investigation is ongoing.

#### *Amendment*

2. Where the identity of the concerned persons is not known to the public, competent authorities shall ensure that their identity is protected for as long as the investigation is ongoing, ***but in no case after the start of the criminal trial.***

## Amendment 65

### Proposal for a directive Article 17

*Text proposed by the Commission*

Article 17

Penalties

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

- a) hinder or attempt to hinder reporting;
- b) take retaliatory measures against reporting persons;
- c) bring vexatious proceedings against reporting persons;
- d) breach the duty of maintaining the confidentiality of the identity of reporting persons.

**2.** *Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons making malicious or abusive reports or disclosures, including measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures.*

**Amendment 66**

**Proposal for a directive**

**Article 21 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

Article 17

Penalties

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

- a) hinder or attempt to hinder reporting;
- b) take retaliatory measures against reporting persons ***or intermediaries***;
- c) bring vexatious proceedings against reporting persons ***or intermediaries***;
- d) breach the duty of maintaining the confidentiality of the identity of reporting persons ***or intermediaries***.

***(ca) the ascertained number of retaliatory measures against reporting persons.***

**Amendment 67**

**Proposal for a directive**

**Article 21 – paragraph 3 a (new)**

**3a. Such reports shall be made public and easily accessible.**

## **Amendment 68**

### **Proposal for a directive**

#### **Annex I – part I – subpart A – point 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Procedures for procurement relating to supplies contracts for defence products and supplies and services contracts for water, energy, transport and postal services and any other contract or service as regulated under Union legislation:

1. Procedures for procurement relating to supplies contracts for defence products and supplies and services contracts for water, energy, transport and postal services and any other contract or service as regulated under Union legislation, ***including:***

## **Amendment 69**

### **Proposal for a directive**

#### **Annex I – part I – subpart A – point 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Review procedures regulated by:

2. Review procedures regulated, ***in particular,*** by:

## **Amendment 70**

### **Proposal for a directive**

#### **Annex I – part I – subpart B – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Rules establishing a regulatory and supervisory framework and consumer and investor protection in the Union financial services and capital markets, banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice and the services listed in Annex I to Directive 2013/36/EU of the

Rules establishing a regulatory and supervisory framework and consumer and investor protection in the Union financial services and capital markets, banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice and the services listed in Annex I to Directive 2013/36/EU of the



European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as regulated by:

European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as regulated *in particular* by:

## Amendment 71

### Proposal for a directive

#### Annex I – part I – subpart C – point 1 – introductory part

##### *Text proposed by the Commission*

1. General safety requirements of products placed in the Union market as defined and regulated by:

##### *Amendment*

1. General safety requirements of products placed in the Union market as defined and regulated *for example* by:

## Amendment 72

### Proposal for a directive

#### Annex I – part I – subpart C – point 2 – introductory part

##### *Text proposed by the Commission*

2. Marketing and use of sensitive and dangerous products, as regulated by:

##### *Amendment*

2. Marketing and use of sensitive and dangerous products, as regulated *for example* by:

## Amendment 73

### Proposal for a directive

#### Annex I – part I – subpart D – point 1

##### *Text proposed by the Commission*

1. Safety requirements in the railway sector as regulated by Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p. 102).

##### *Amendment*

1. Safety requirements in the railway sector as regulated *in particular* by Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p. 102).

## Amendment 74

### Proposal for a directive

#### Annex I – part I – subpart D – point 2

##### *Text proposed by the Commission*

2. Safety requirements in the civil aviation sector as regulated by Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35).

##### *Amendment*

2. Safety requirements in the civil aviation sector as regulated ***in particular*** by Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35).

## Amendment 75

### Proposal for a directive

#### Annex I – part I – subpart D – point 3 – introductory part

##### *Text proposed by the Commission*

3. Safety requirements in the road sector as regulated by:

##### *Amendment*

3. Safety requirements in the road sector as regulated ***for example*** by:

## Amendment 76

### Proposal for a directive

#### Annex I – part I – subpart D – point 4 – introductory part

##### *Text proposed by the Commission*

4. Safety requirements in the maritime sector as regulated by:

##### *Amendment*

4. Safety requirements in the maritime sector as regulated ***in particular*** by:

## Amendment 77

### Proposal for a directive

#### Annex I – part I – subpart E – point i

##### *Text proposed by the Commission*

(i) Any criminal offence against the protection of the environment as regulated by Directive 2008/99/EC of the European

##### *Amendment*

(i) Any criminal offence against the protection of the environment as regulated ***for example*** by Directive 2008/99/EC of

Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28) or any unlawful conduct infringing the legislation set out in the Annexes of the Directive 2008/99/EC;

the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28) or any unlawful conduct infringing the legislation set out in the Annexes of the Directive 2008/99/EC;

## **Amendment 78**

### **Proposal for a directive**

#### **Annex I – part I – subpart F – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Rules on nuclear safety as regulated by:

Rules on nuclear safety as regulated ***for example*** by:

## **Amendment 79**

### **Proposal for a directive**

#### **Annex I – part I – subpart G – point 1**

*Text proposed by the Commission*

*Amendment*

1. Union food and feed law governed by the general principles and requirements as defined by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

1. Union food and feed law governed by the general principles and requirements as defined ***in particular*** by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

## **Amendment 80**

### **Proposal for a directive**

#### **Annex I – part I – subpart G – point 2**

*Text proposed by the Commission*

*Amendment*

2. Animal health as regulated by Regulation (EU) 2016/429 of the European

2. Animal health as regulated ***in particular*** by Regulation (EU) 2016/429 of

Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

## **Amendment 81**

### **Proposal for a directive**

#### **Annex I – part I – subpart G – point 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

4. Protection of animal welfare as regulated by:

4. Protection of animal welfare as regulated *for example* by:

## **Amendment 82**

### **Proposal for a directive**

#### **Annex I – part I – subpart H – point 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Measures setting high standards of quality and safety of organs and substances of human origin, as regulated by:

1. Measures setting high standards of quality and safety of organs and substances of human origin, as regulated *for example* by:

## **Amendment 83**

### **Proposal for a directive**

#### **Annex I – part I – subpart H – point 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Measures setting high standards of quality and safety for medicinal products and devices of medical use as regulated by:

2. Measures setting high standards of quality and safety for medicinal products and devices of medical use as regulated *for example* by:

## **Amendment 84**

### **Proposal for a directive**

#### **Annex I – part I – subpart H – point 3**

*Text proposed by the Commission*

3. Serious cross-border threats to health as regulated by Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).

*Amendment*

3. Serious cross-border threats to health as regulated ***in particular*** by Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).

**Amendment 85**

**Proposal for a directive**

**Annex I – part I – subpart H – point 4**

*Text proposed by the Commission*

4. Patients' rights as regulated by Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

*Amendment*

4. Patients' rights as regulated ***in particular*** by Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

**Amendment 86**

**Proposal for a directive**

**Annex I – part I – subpart H – point 5**

*Text proposed by the Commission*

5. Manufacture, presentation and sale of tobacco and related products regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

*Amendment*

5. Manufacture, presentation and sale of tobacco and related products regulated ***in particular*** by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

**Amendment 87**

**Proposal for a directive**

**Annex I – part I – subpart I – paragraph 1 – introductory part**

*Text proposed by the Commission*

Consumer rights and consumer protection  
as regulated by:

*Amendment*

Consumer rights and consumer protection  
as regulated *for example* by:

**Amendment 88**

**Proposal for a directive**

**Annex I – part II – subpart C a (new)**

*Text proposed by the Commission*

*Amendment*

***Ca. Protection of the Union's financial  
interests:***

***(i) Regulation (EU, Euratom) No  
1023/2013 of the European Parliament  
and of the Council of 22 October 2013  
amending the Staff Regulations of  
Officials of the European Union and the  
Conditions of Employment of Other  
Servants of the European Union.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Protection of persons reporting on breaches of Union law						
<b>References</b>	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)						
<b>Committee responsible</b> Date announced in plenary	JURI 28.5.2018						
<b>Opinion by</b> Date announced in plenary	CULT 28.5.2018						
<b>Rapporteur</b> Date appointed	Curzio Maltese 16.5.2018						
<b>Discussed in committee</b>	11.7.2018						
<b>Date adopted</b>	10.10.2018						
<b>Result of final vote</b>	<table> <tr> <td>+:                   </td><td>24</td></tr> <tr> <td>–:                   </td><td>3</td></tr> <tr> <td>0:                   </td><td>0</td></tr> </table>	+:	24	–:	3	0:	0
+:	24						
–:	3						
0:	0						
<b>Members present for the final vote</b>	Isabella Adinolfi, Dominique Bilde, Nikolaos Chountis, Silvia Costa, Mircea Diaconu, Damian Drăghici, Jill Evans, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Krystyna Łybacka, Svetoslav Hristov Malinov, Rupert Matthews, Stefano Maullu, Morten Messerschmidt, Luigi Morgano, Momchil Nekov, Michaela Šojdrová, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver						
<b>Substitutes present for the final vote</b>	Norbert Erdős, Martina Michels						

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
ALDE	Mircea Diaconu, María Teresa Giménez Barbat
EFDD	Isabella Adinolfi
GUE/NGL	Nikolaos Chountis, Martina Michels
PPE	Norbert Erdős, Svetoslav Hristov Malinov, Stefano Maullu, Michaela Šojdrová, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver
S&D	Silvia Costa, Damian Drăghici, Giorgos Grammatikakis, Petra Kammerevert, Krystyna Łybacka, Luigi Morgano, Momchil Nekov, Julie Ward
VERTS/ALE	Jill Evans, Helga Trüpel

3	-
ECR	Rupert Matthews, Morten Messerschmidt
ENF	Dominique Bilde

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention



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

### **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)**

*Text proposed by the Commission*

*Amendment*

***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*

*Amendment*

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

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about ***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*

*Amendment*

(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.

(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 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, 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.

---

<sup>40</sup> COM(2018) 10 final.

<sup>41</sup> 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*

(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 2018<sup>40</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>41</sup>, 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.

---

<sup>40</sup> COM(2018) 10 final.

<sup>41</sup> 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 systems<sup>45</sup>, 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. 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.

---

<sup>45</sup> 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*

(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 systems<sup>45</sup>, 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. 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.

---

<sup>45</sup> 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

*Amendment*

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

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 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 abuse<sup>49</sup> and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation<sup>50</sup>, 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

##### *Amendment*

(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse<sup>49</sup> and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation<sup>50</sup>, 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.

---

<sup>49</sup> OJ L 173, p. 1

<sup>50</sup>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).

services and the prevention of ***and the fight against*** money laundering and terrorist financing are currently obliged to establish internal reporting channels.

---

<sup>49</sup> OJ L 173, p. 1

<sup>50</sup>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*

*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 ***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.

(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 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.

*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 *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 Union<sup>52</sup>, i.e. persons who, for a certain period of time, perform services for and under the direction of another person,

*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 Union<sup>52</sup>, 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.

---

<sup>52</sup> 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.

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.

---

<sup>52</sup> 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.

## 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-

#### *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

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

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

## **Amendment 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)<sup>1a</sup>.*

---

*<sup>1a</sup> 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 P 045 14.6.1962, p. 1385).*

*(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*

*Amendment*

(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.

(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*

*Amendment*

(33) Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers from retaliation increases the legal certainty of (potential)

(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.

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

#### *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, **prevention** and detection of money laundering and terrorist financing or in the area of financial services.

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 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

#### *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

provided support to the reporting person.

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

#### *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

law:

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 money laundering and terrorist financing;

*Amendment*

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

(viii) public health;

*Amendment*

(viii) public health *and public safety*;

## Amendment 34

### Proposal for a directive

#### Article 1 – paragraph 1 – point d

*Text proposed by the Commission*

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.

*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;

*(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

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.

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*

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

##### *Amendment*

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*

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

##### *Amendment*

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

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;

##### *Amendment*

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

#### *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

liability of any kind related to such disclosure.

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)**

**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)**

**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**

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 Council<sup>63</sup>, 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 Council<sup>63</sup>, 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.

---

<sup>63</sup> 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).

---

<sup>63</sup> 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

<b>Title</b>	Protection of persons reporting on breaches of Union law
<b>References</b>	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)
<b>Committee responsible</b> Date announced in plenary	JURI
<b>Opinion by</b> Date announced in plenary	AFCO 28.5.2018
<b>Rapporteur</b> Date appointed	Ramón Jáuregui Atondo 11.6.2018
<b>Discussed in committee</b>	11.7.2018
<b>Date adopted</b>	1.10.2018
<b>Result of final vote</b>	+: 12 –: 1 0: 9
<b>Members present for the final vote</b>	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
<b>Substitutes present for the final vote</b>	Max Andersson, Enrique Guerrero Salom, Cristian Dan Preda, Jasenko Selimovic
<b>Substitutes under Rule 200(2) present for the final vote</b>	Ruža Tomašić



## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<b>12</b>	<b>+</b>
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

<b>1</b>	<b>-</b>
NI	Diane James

<b>9</b>	<b>0</b>
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

## PROCEDURE – COMMITTEE RESPONSIBLE

Title	Protection of persons reporting on breaches of Union law			
References	COM(2018)0218 – C8-0159/2018 – 2018/0106(COD)			
Date submitted to Parliament	23.4.2018			
Committee responsible Date announced in plenary	JURI 28.5.2018			
Committees asked for opinions Date announced in plenary	INTA 28.5.2018	CONT 28.5.2018	ECON 28.5.2018	EMPL 28.5.2018
	ENVI 28.5.2018	ITRE 28.5.2018	IMCO 28.5.2018	TRAN 28.5.2018
	AGRI 28.5.2018	CULT 28.5.2018	LIBE 28.5.2018	AFCO 28.5.2018
	PETI 28.5.2018			
Not delivering opinions Date of decision	INTA 16.5.2018	ITRE 28.5.2018	IMCO 16.5.2018	TRAN 14.5.2018
	AGRI 20.6.2018	PETI 16.5.2018		
Associated committees Date announced in plenary	ECON 25.10.2018	LIBE 13.9.2018		
Rapporteurs Date appointed	Virginie Rozière 15.5.2018			
Legal basis disputed Date of JURI opinion	JURI 22.10.2018			
Discussed in committee	20.6.2018	10.7.2018	24.9.2018	
Date adopted	20.11.2018			
Result of final vote	+: 22 -: 0 0: 1			
Members present for the final vote	Max Andersson, Joëlle Bergeron, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka			
Substitutes present for the final vote	Geoffroy Didier, Pascal Durand, Jytte Guteland, Virginie Rozière, Kosma Złotowski			
Date tabled	27.11.2018			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

22	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
ECR	Kosma Złotowski
EFDD	Joëlle Bergeron, Laura Ferrara
ENF	Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
PPE	Geoffroy Didier, Emil Radev, Pavel Svoboda, József Szájer, Axel Voss, Tadeusz Zwiefka
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Jytte Guteland, Sylvia-Yvonne Kaufmann, Evelyn Regner, Virginie Rozière
VERTS/ALE	Max Andersson, Pascal Durand, Julia Reda

0	-

1	0
ECR	Sajjad Karim

Key to symbols:

+ : in favour

- : against

0 : abstention