



2016/2224(INI)

31.5.2017

OPINION

of the Committee on Culture and Education

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI))

Rapporteur: Zdzisław Krasnodębski

PA_NonLeg

SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Considers that whistle-blowing is one of the most important means to detect and prevent misconduct, wrongdoing or illegal activity, in particular fraud and corruption in public administration and private companies, organised crime, tax evasion and tax avoidance; is of the opinion that whistle-blowers are essential for protecting the public interest, saving public money, and ensuring transparency and integrity in public life; notes that whistle-blowers have disclosed scandals affecting several Member States, and underlines the fact that whistle-blowers are an essential pillar of the EU strategy against corruption and for ensuring that companies and governments are called to account;
2. Is of the opinion that cultural differences do not detract from the need for legal protection for whistle-blowers in Member States;
3. Stresses that negative perceptions of the act of whistle-blowing and of whistle-blowers slow progress in passing/enforcing whistle-blower laws in many countries, but also weaken citizens' willingness to report irregularities even when legal protection mechanisms are already in place;
4. Is of the opinion that the protection of whistle-blowers is essential for freedom of expression, plurality of opinions, democracy and freedom;
5. Stresses that legal protection of whistle-blowers is required in the European Union; reaffirms that the rule of law is beneficial for a culture of freedom of expression;
6. Reaffirms that the implementation of legal instruments providing a safe environment for whistle-blowers encourages a speak-up culture and helps EU citizens to exercise their right to act against wrongdoing; notes that whistle-blowing should be promoted as a civic engagement and an act of good citizenship and should be supported by effective awareness-raising, communication, learning, educational and training efforts, while ensuring that sufficient safeguards are in place for the protection of commercially sensitive company information such as trade secrets;
7. Encourages Member States to be proactive in promoting an open culture within the workplace, whether public or private, which enables organisations to operate to high ethical standards and gives employees the confidence to speak up, and therefore enables action to be taken to prevent or remedy any threats or harm;
8. Encourages Member States to evaluate regularly the effectiveness of the measures they implement, taking account of public opinion on attitudes towards the act of whistle-blowing and whistle-blowers, cross-sectoral surveys of senior managers responsible for receiving and handling reports, and independent research studies on whistle-blowing across workplaces;
9. Reaffirms the need for public institutions and private organisations to establish, in close cooperation with all staff representatives, including workers where possible, internal

whistle-blowing policies for their employees, including trainees and apprentices, setting out clear and confidential routes for making disclosures, including external disclosures, informing them of their right to protection against reprisals when reporting misconduct, and providing, where appropriate, confidential legal advice and relevant courses and training sessions; insists that these policies shall not replace legislation on whistle-blower protection;

10. Notes that, owing to inadequate legal safeguards and significant gaps in the protection of whistle-blowers against retaliation, intimidation and isolation, the obligation to use internal reporting channels can be risky and can have a deterrent effect, restricting both freedom of expression and the public's right to access information; stresses that internal reporting procedures must not be used as a tool for prohibiting the act of informing the wider public of illegal activities and activities that severely harm the public interest; stresses that this must apply equally to the use of external whistle-blowing procedures and that accordingly, as laid down in Article 5 of ILO Convention 158 of 22 June 1982, the filing of a complaint, participation in proceedings against an employer or provision of information to a competent authority do not constitute valid reasons for termination of employment;
11. Notes that protected disclosures concerning harm or threats to the public interest that have occurred, are occurring at the time of the disclosure, or are likely to occur, can be made internally within the workplace or externally, as alternatives or cumulatively, to the competent authorities or to parliamentarians and oversight agencies, as well as to trade unions and employers' associations, or to the public through the media, including social media, or non-governmental organisations;
12. Recalls that whistle-blowing is linked to freedom of the press and is essential in bringing to light illegal activities or activities which harm the public interest; stresses that whistle-blowers are an important source of information for investigative journalism, and calls on Member States to ensure that the right of journalists not to reveal a source's identity, including in cases where journalists are themselves the source of information, is effectively and legally protected, and that authorities should refrain from using surveillance to ascertain their sources; observes in this context that the European Court of Human Rights has held, in its case law, that protection of journalists' sources is not a privilege but a vital component of a free press¹;
13. Is of the opinion that the EU institutions should serve as a role model with regard to whistle-blowing policy; expresses concern that many of the EU agencies have still not implemented the 2012 guidelines on whistle-blowing and that findings from a 2015 survey showed low awareness of the rules among Commission staff; calls on the Commission and the EU agencies to ensure that the guidelines are implemented in the agencies and that staff in the EU institutions and bodies are sufficiently familiar with them; encourages the Commission to insert a standard clause in contracts and grant agreements requiring beneficiaries and persons working for those beneficiaries to report serious irregularities to OLAF;
14. Calls on the EU institutions, in cooperation with all relevant national authorities, to introduce and take all necessary measures to protect the anonymity and confidentiality of

¹ European Court of Human Rights, judgment of 27.11.2007, 20477/05, Tillack v Belgium.

their information sources in order to prevent any discriminatory action or threats;

15. Encourages those Member States that have not yet adopted legislation on whistle-blowing to do so in the near future, and calls on the Commission to consider creating a platform for exchanging best practices in this area between Member States, but also with third countries.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR FOR THE OPINION HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur for the opinion. The rapporteur has received input from the following entities or persons in the preparation of opinion *Legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies* PE601.025 – 2016/2224(INI) (Rapporteur: Zdzisław Krasnodębski).

Entity and/or person
OLAF, European Commission
Investigation and Disciplinary Office of the Commission, DG HR, European Commission
Agencies, European Schools & International Affairs, DG HR, European Commission
Permanent Representation of Poland to the European Union
Transparency International
Journalismfund.eu
Public Integrity Program, Stefan Batory Foundation (Fundacja Batorego)
Institute of Public Affairs (Instytut Spraw Publicznych)
Sobieski Institute (Instytut Sobieskiego)
Forum of Trade Unions (Forum Związków Zawodowych)
Ethics Line (Linia Etyki)

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	30.5.2017
Result of final vote	+: 15 -: 9 0: 2
Members present for the final vote	Andrea Bocskor, Nikolaos Chountis, Silvia Costa, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Luigi Morgano, Momchil Nekov, John Procter, Michaela Šojdrová, Helga Trüpel, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
Substitutes present for the final vote	Santiago Fisas Aixelà, Dietmar Köster, Zdzisław Krasnodębski, Morten Løkkegaard, Martina Michels, Remo Sernagiotto
Substitutes under Rule 200(2) present for the final vote	Josep-Maria Terricabras, Kazimierz Michał Ujazdowski

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

15	+
ALDE	María Teresa Giménez Barbat, Morten Løkkegaard
ECR	Zdzisław Krasnodębski, John Procter, Remo Sernagiotto, Kazimierz Michał Ujazdowski
PPE	Andrea Bocskor, Santiago Fisas Ayxelà, Svetoslav Hristov Malinov, Michaela Šojdrová, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver

9	-
S&D	Silvia Costa, Giorgos Grammatikakis, Petra Kammerevert, Dietmar Köster, Krystyna Łybacka, Luigi Morgano, Momchil Nekov
VERTS/ALE	Josep-Maria Terricabras, Helga Trüpel

2	0
GUE/NGL	Nikolaos Chountis, Martina Michels

Key to symbols:

+ : in favour

- : against

0 : abstention