



23.7.2018

# **DRAFT 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

PA\_Legam

## AMENDMENTS

### Amendment 1

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

*Text proposed by the Commission*

*Amendment*

*Having regard to its resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)),*

Or. en

### Amendment 2

#### Proposal for a directive Citation 6 b (new)

*Text proposed by the Commission*

*Amendment*

*Having regard to its 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 (2016/2224(INI)),*

Or. en

### 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

(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.

play a key role in *detecting and disclosing irregularities, fraud, corruption and other wrongdoing or* breaches of the law *both in the public and the private sectors*.

However, potential whistleblowers 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>*

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<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).*

Or. en

#### **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 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, *thus enhancing transparency and accountability*.

Or. en

## 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 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.

Or. en

## 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, 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.

Or. en

## Amendment 7

### 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;***

Or. en

#### *Justification*

*Investigators consistently report that whistleblowers are among the main triggers for successful corruption investigations. Without inside information corruption is hard to detect. Article 33 requires states to carry out a process of evaluating appropriate measures in their country.*

## Amendment 8

### Proposal for a directive Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

***(16 a) In the context of the discharge procedure referred to in Article 319 TFEU, the European Parliament needs as much information as possible relating to any irregularities affecting the financial interests of the Union. In cases concerning irregularities internal to the institutions, the European Parliament should be entitled to full access to information so that it can conduct the discharge procedure in full knowledge of***

*the facts. Moreover, the European Parliament regularly receives information directly from citizens in respect of irregularities affecting the financial interests of the Union and should be able to rely on measures taken by the Union and its Member States and that provide effective protection of whistleblowers.*

Or. en

#### *Justification*

*This reference was made in recital A in the already adopted European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)).*

### **Amendment 9**

#### **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 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.

Or. en

### **Amendment 10**

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

##### **Recital 24**

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

(24) Persons need specific legal

###### *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.***

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.

Or. en

## 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 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, 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.

Or. en



## Amendment 12

### 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 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 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.

Or. en

### *Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 14 and 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 (2016/2224(INI)), recital T and paragraph 21 and 44. As far as investigative journalists are concerned, this concerns the phase prior to publication. In some cases, there is collaboration with an investigative journalist to obtain certain information. In those cases, the intermediary or investigative journalist should also be protected.*

## **Amendment 13**

### **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 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 negative reference for future employment or otherwise damaging their reputation.

Or. en

## **Amendment 14**

### **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. At the same time, protection should not apply to the reporting of information which *the persons concerned do not reasonably believe is true at the time it is disclosed*.

Or. en

*Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 13.*

**Amendment 15**

**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.

Or. en

## Amendment 16

### 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*** 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.

Or. en

## Amendment 17

### 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.***

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***<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)***

*Justification*

*European Union staff members should be equally protected under the scope of the Directive, and the EU institutions, agencies, and bodies must have the same obligations for public sector entities set forth in the Directive.*

**Amendment 18****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 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.***

Or. en

*Justification*

*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 (2016/2224(INI)), calls on Member States and EU institutions to set up independent national and EU authorities to protect whistleblowers, and to consider providing those authorities with specific support funds, paragraph 56.*

## Amendment 19

### 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.***

Or. en

#### *Justification*

*The establishment of an independent information-gathering, advisory and referral EU body was also mentioned in paragraph 15 of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)). Both civil servants and third parties reporting on EU institutions should be covered by this body.*

## Amendment 20

### Proposal for a directive Recital 37

*Text proposed by the Commission*

*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

(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

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.

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.

Or. en

## Amendment 21

### 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.

Or. en

##### *Justification*

*A whistleblower can report internally, externally and towards the media. There may be reasons why a whistleblower would not want to report internally, but directly to the competent authorities. In that case it should be possible to blow the whistle externally to the competent authorities. This should not be confused with going to the media. This is not equal to public reporting.*

## Amendment 22

### 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

##### *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 external reporting platform providers, external counsel or auditors or trade union representatives.

protection and secrecy. These can be **journalists**, external reporting platform providers, external counsel or auditors or trade union representatives.

Or. en

## Amendment 23

### 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.

Or. en

## Amendment 24

### 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***

#### *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.



*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.*

Or. en

## Amendment 25

### 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, 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*

(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 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.

Or. en

## Amendment 26

### 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*

(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.***

Or. en

## Amendment 27

### Proposal for a directive Recital 55

#### *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

#### *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

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.

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.

Or. en

## **Amendment 28**

### **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.*

Or. en

## **Amendment 29**

### **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 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.

Or. en

*Justification*

*The establishment of an independent information-gathering, advisory and referral EU body was also mentioned in paragraph 15 of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)).*

**Amendment 30**

**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***

*Amendment*

(61) It is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such

*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 European Court of Human Rights<sup>57</sup>.*

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<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.

as freedom of expression and media freedom, **and** 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>.

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<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.

Or. en

## Amendment 31

### 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

#### *Amendment*

(62) Reporting persons should **be able to** 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

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).

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).

Or. en

## Amendment 32

### 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***

##### *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. ***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

*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.*

Union shall be *equally* protected.

Or. en

### Amendment 33

#### 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 those facilitating the reporting, such as intermediaries and investigative journalists* 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 representatives *of those* who have provided support to the reporting person.

Or. en

## Amendment 34

### 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. 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. 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 ***safe and confidential*** channels and that breaches and wrongdoings are detected in a timely manner or even prevented.

Or. en

## Amendment 35

### 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

##### *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.

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.

Or. en

## **Amendment 36**

### **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 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.

Or. en

## **Amendment 37**

### **Proposal for a directive Recital 74**

(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.

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<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).

(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 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.

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<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).

Or. en

### *Justification*

*The protection of whistleblowers provided for in this Directive shall prevail over Directive (EU) 2016/943 of the European Parliament and of the Council. Whistleblowers' rights apply regardless of trade secrets.*

## Amendment 38

### 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.

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<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.

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<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).

Or. en

## Amendment 39

### 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

#### *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, ***as well as***

following unlawful activities or abuse of law:

***for those facilitating the reporting, such as intermediaries and investigative journalists***, on the following unlawful activities or abuse of law:

Or. en

#### *Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 14 and 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 (2016/2224(INI)), recital T and paragraph 21 and 44.*

#### **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 staff members of the European Union and the European Atomic Energy Community.***

Or. en

#### *Justification*

*European Union staff members should be equally protected under the scope of the Directive, and the EU institutions, agencies, and bodies must have the same obligations for public sector entities set forth in the Directive.*

#### **Amendment 41**

##### **Proposal for a directive Article 2 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2 b. This Directive shall also apply to those facilitating reporting, such as intermediaries and investigative journalists.**

Or. en

*Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 14 and 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 (2016/2224(INI)), recital T and paragraph 21 and 44.*

## **Amendment 42**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 5**

*Text proposed by the Commission*

*Amendment*

(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;***

(5) ‘report’ means the provision of information relating to a breach which has occurred or is likely to occur;

Or. en

## **Amendment 43**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 9**

*Text proposed by the Commission*

*Amendment*

(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches ***acquired in the***

(9) ‘reporting person’ means a natural or legal person who reports or discloses

*context of his or her work-related activities;*

information on breaches;

Or. en

#### **Amendment 44**

##### **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.

Or. en

#### **Amendment 45**

##### **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;

Or. en

#### **Amendment 46**

##### **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;***

Or. en

*Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 14 and 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 (2016/2224(INI)), recital T and paragraph 21 and 44.*

**Amendment 47**

**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.

Or. en

**Amendment 48**

**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.**

Or. en

*Justification*

*The establishment of an independent information-gathering, advisory and referral EU body was also mentioned in paragraph 15 of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)).*

**Amendment 49**

**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 ***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.***

Or. en



### *Justification*

*European Union staff members should be equally protected under the scope of the Directive, and the EU institutions, agencies, and bodies must have the same obligations for public sector entities set forth in the Directive.*

#### **Amendment 50**

##### **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:

Or. en

#### **Amendment 51**

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

##### **Article 4 – paragraph 6 – point d a (new)**

*Text proposed by the Commission*

**d a) Union institutions, agencies and bodies.**

*Amendment*

Or. en

#### **Amendment 52**

##### **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 the identity of the reporting person and prevents access to non-authorised **staff**

*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 **persons**;

*members;*

Or. en

### **Amendment 53**

#### **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.***

Or. en

### **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, ***during which the reporting person may be accompanied by a union representative or his or her legal representative, if he or she wishes.***

Or. en

### **Amendment 55**

#### **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*

1. Member States shall designate ***or set up*** the authorities competent to receive and handle reports.

Or. en

## **Amendment 56**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***a a) provide advice and legal support for reporting persons and those facilitating the reporting, such as intermediaries and investigative journalists;***

Or. en

## **Amendment 57**

### **Proposal for a directive**

#### **Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 6 a***

##### ***European 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 European 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 European 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.*

Or. en

## Amendment 58

### 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

*Amendment*

4. Member States **and the Commission** shall establish procedures to

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.

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.

Or. en

## Amendment 59

### 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 ***and the Commission*** shall ensure that competent authorities ***and the Union referral body*** have staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.

Or. en

## Amendment 60

### 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*

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;***

Or. en

## Amendment 61

### 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, 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.

Or. en

*Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 14 and 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 (2016/2224(INI)), recital T and paragraph 21 and 44.*

## Amendment 62

### 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;

Or. en

*Justification*

*This was part of the European Parliament resolution of 14 February 2017 on the role of*

*whistleblowers in the protection of EU's financial interests (2016/2055(INI)), paragraph 14 and 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 (2016/2224(INI)), recital T and paragraph 21 and 44.*

### **Amendment 63**

#### **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:

Or. en

### **Amendment 64**

#### **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.

Or. en

### **Amendment 65**

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

#### **Article 11 – paragraph 2**

*Text proposed by the Commission*

2. Competent authorities shall

*Amendment*

2. Competent authorities **and the**

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.

**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.

Or. en

## Amendment 66

### 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:

Or. en

## Amendment 67

### 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

##### *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



possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

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

Or. en

## Amendment 68

### 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:

Or. en

## Amendment 69

### 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.

Or. en

## Amendment 70

### 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***

Or. en

## Amendment 71

### 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.***

Or. en

## Amendment 72

### 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***

### Amendment 73

#### 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.

Or. en

### Amendment 74

#### Proposal for a directive Article 13 – paragraph 2

*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 :***

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***

*Amendment*

***deleted***

*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.*

Or. en

#### *Justification*

*There should be no restrictions or extra burden for reporting persons who wish to report directly to regulators and national authorities.*

#### **Amendment 75**

##### **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 2.

Or. en

## Amendment 76

### 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 ***and those facilitating the reporting***

Or. en

## Amendment 77

### 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 ***and the Commission*** shall take the necessary measures to prohibit any form of retaliation, whether direct or 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:

Or. en

## Amendment 78

### 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

Or. en

## Amendment 79

### 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.

Or. en

## Amendment 80

### 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.

Or. en

## Amendment 81

### 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.

Or. en

**Amendment 82**

**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 **and those facilitating the reporting** 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.

Or. en

**Amendment 83**

**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

*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.

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<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).

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.

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<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).

Or. en

## Amendment 84

### 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**.

Or. en

## Amendment 85

### 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*

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



or disclosures.

Or. en