



5.10.2018

OPINION

of the Committee on Budgetary Control

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council
on the protection of persons reporting on breaches of Union law
(COM(2018)0218 – C8-0159/2018 – 2018/0106(COD))

Rapporteur for opinion: Dennis de Jong

PA_Legam

AMENDMENTS

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in ***exposing and preventing*** breaches of the law ***and in safeguarding the welfare of society***. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation.

Amendment

(1) Persons who work for an organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in ***preventing, detecting and disclosing irregularities, fraud, corruption and other wrongdoing or*** breaches of law ***both in the public and the private sectors***. However, potential whistle-blowers are often discouraged from reporting their concerns or suspicions for fear of retaliation ***or of being accused of unlawful acquisition, use or disclosure of trade secrets as defined in Directive (EU)2016/943 of the European Parliament and of the Council^{1a}. The purpose of this Directive is to create a climate of trust that enables whistle-blowers to report their concerns or suspicions.***

^{1a} ***Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).***

Amendment 2

Proposal for a directive

Recital 1 a (new)

(1a) *The Whistle-blowers' protection is an important matter to the Parliament that has approved the resolution of 14 February 2017 on the role of whistle-blowers in the protection of EU's financial interests (2016/2055(INI)) and the resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).*

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(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.***

Amendment 4

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) ***In certain policy areas***, breaches of Union law may cause serious harm to the public interest, in the sense of creating significant risks for the welfare of society. ***Where weaknesses of enforcement have been identified in those areas, and*** whistleblowers are in a privileged position

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***

to disclose breaches, it is necessary to enhance enforcement by ensuring effective protection of whistleblowers from retaliation and introducing effective reporting channels.

of the public interest, notwithstanding any personal and professional risk, it is necessary to enhance enforcement *of Union law* by ensuring effective protection of whistleblowers from retaliation and introducing effective, *independent* reporting channels.

Amendment 5

Proposal for a directive

Recital 4

Text proposed by the Commission

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

Amendment

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

Amendment 6

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

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

Amendment 7

Proposal for a directive Recital 5

Text proposed by the Commission

(5) Accordingly, common minimum standards ensuring effective whistleblower protection should apply in those acts and policy areas where i) there is a need to strengthen enforcement; ii) under-reporting by whistleblowers is a key factor affecting enforcement, and iii) breaches of Union law cause serious harm to the public interest.

Amendment

(5) Accordingly, common minimum standards ensuring effective whistleblower protection ***with a global and comprehensive approach***, should apply in those acts and ***with particular emphasis on*** policy areas where i) there is a need to strengthen enforcement; ii) under-reporting by whistleblowers is a key factor affecting enforcement, and iii) breaches of Union law cause serious harm to the public interest.

Amendment 8

Proposal for a directive Recital 16

Text proposed by the Commission

(16) The protection of the financial interests of the Union, which relates to the fight against fraud, corruption and any other illegal activity affecting the use of Union expenditures, the collection of Union revenues and funds or Union assets, is a core area in which enforcement of Union law needs to be strengthened. The strengthening of the protection of the financial interests of the Union also encompasses implementation of the Union budget related to expenditures made on the basis of the Treaty establishing the European Atomic Energy Community. Lack of effective enforcement in the area of the financial interests of the Union, including fraud and corruption at national level, causes a decrease of the Union revenues and a misuse of EU funds, which can distort public investments and growth and undermine citizens' trust in EU action.

Amendment

(16) The protection of the financial interests of the Union, which relates to the fight against fraud, corruption, ***the violation of legal obligations, the abuse of power*** and any other illegal activity affecting the use of Union expenditures, the collection of Union revenues and funds or Union assets, is a core area in which enforcement of Union law needs to be strengthened. The strengthening of the protection of the financial interests of the Union also encompasses implementation of the Union budget related to expenditures made on the basis of the Treaty establishing the European Atomic Energy Community. Lack of effective enforcement in the area of the financial interests of the Union, including fraud and corruption at national level, causes a decrease of the Union revenues and a misuse of EU funds, which can distort public investments and

Whistleblower protection is necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.

growth and undermine citizens' trust in EU action. Whistleblower protection is necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.

Amendment 9

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, **consideration** should be **given to whether to amend** the Annex to the present Directive in order to place it under its scope.

Amendment

(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, **it** should be **added to** the Annex to the present Directive in order to place it under its scope.

Amendment 10

Proposal for a directive

Recital 20

Text proposed by the Commission

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

Amendment

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

Amendment 11

Proposal for a directive Recital 22

Text proposed by the Commission

(22) Persons who report information about threats or harm to the public interest ***obtained in the context of their work-related activities*** make use of their right to freedom of expression. The right to freedom of expression, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter') and in Article 10 of the European Convention on Human Rights (ECHR), encompasses media freedom and pluralism.

Amendment

(22) Persons who report information, ***particularly*** about threats or harm to the public interest, make use of their right to freedom of expression. The right to freedom of expression, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter') and in Article 10 of the European Convention on Human Rights (ECHR), encompasses ***freedom of information as well as*** media freedom and pluralism.

Amendment 12

Proposal for a directive Recital 24

Text proposed by the Commission

(24) Persons need specific legal protection where they acquire the information ***they*** report ***through their work-related activities and therefore run the risk of work-related retaliation*** (for instance, for breaching the duty of confidentiality or loyalty). The underlying reason for providing them with protection is their position of economic vulnerability vis-à-vis the person on whom they de facto depend for work. ***When there is no such work-related power imbalance (for instance in the case of ordinary complainants or citizen bystanders) there is no need for protection against retaliation.***

Amendment

(24) Persons need specific legal protection where they acquire the information ***and their decision to report it results in a*** risk of work-related ***or other*** retaliation (for instance, for breaching the duty of confidentiality or loyalty ***or Union legislation on trade secrets***). The underlying reason for providing them with protection is their position of economic vulnerability vis-à-vis the person on whom they ***are reporting or on whom they*** de facto depend for work.

Amendment 13

Proposal for a directive Recital 25

Text proposed by the Commission

(25) Effective enforcement of Union law requires that protection is granted to the broadest possible range of categories of persons, who, irrespective of whether they are EU citizens or third-country nationals, ***by virtue of work-related activities (irrespective of the nature of these activities, whether they are paid or not)***, have ***privileged*** access to information about breaches that would be in the public's interest to report and who may suffer retaliation if they report them. Member States should ensure that the need for protection is determined by reference to all the relevant circumstances ***and not merely by reference to the nature of the relationship***, so as to cover ***the whole range of*** persons connected ***in a broad sense*** to the ***organisation where the breach has occurred***.

Amendment 14

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union⁵², i.e. persons who, for a certain period of time, perform services for and under the direction of another person, in return of which they receive remuneration. Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, which are types of relationships where standard protections against unfair treatment are often difficult to apply.

Amendment

(25) Effective enforcement of Union law requires that protection is granted to the broadest possible range of categories of persons, who, irrespective of whether they are EU citizens or third-country nationals, have access to information about breaches that would be in the public's interest to report, ***including about activities of Union institutions inside and outside the Union***, and who may suffer retaliation if they report them. Member States should ensure that the need for protection is determined by reference to all the relevant circumstances, so as to cover ***all*** persons connected to the ***report***.

Amendment

(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union⁵², i.e. persons who, for a certain period of time, perform services for and under the direction of another person, in return of which they receive remuneration. Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, ***interns***, as well as persons with a contract of employment or employment relationship with a temporary agency, which are types of relationships where standard protections against unfair treatment are often difficult to apply.

⁵² Judgments of 3 July 1986, Lawrie-Blum, Case 66/85; 14 October 2010, Union Syndicale Solidaires Isère, Case C-428/09; 9 July 2015, Balkaya, Case C-229/14; 4 December 2014, FNV Kunsten, Case C-413/13; and 17 November 2016, Ruhrlandklinik, Case C-216/15.

⁵² Judgments of 3 July 1986, Lawrie-Blum, Case 66/85; 14 October 2010, Union Syndicale Solidaires Isère, Case C-428/09; 9 July 2015, Balkaya, Case C-229/14; 4 December 2014, FNV Kunsten, Case C-413/13; and 17 November 2016, Ruhrlandklinik, Case C-216/15.

Amendment 15

Proposal for a directive

Recital 27

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

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

employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

Amendment 16

Proposal for a directive

Recital 28

Text proposed by the Commission

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

Amendment

(28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work-related activities economically, may nevertheless suffer retaliation for exposing breaches ***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. ***Retaliation against investigators or reporters could take the form of strategic litigation suits, for example regarding libel or defamation.***

Amendment 17

Proposal for a directive

Recital 30

Text proposed by the Commission

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

Amendment

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

reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. ***At the same time, protection should not apply to the reporting of information which is already in the public domain or of unsubstantiated rumours and hearsay.***

reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. ***Protection should be given to individuals working at institutions within the Union, but also to individuals working in European entities located outside Union territory. It should also apply to officials as well as other employees and interns working at the institutions, agencies and bodies of the Union.***

Amendment 18

Proposal for a directive Recital 31

Text proposed by the Commission

(31) Retaliation expresses the ***close*** (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person, so that this person can enjoy legal protection. Effective protection of reporting persons as a means of enhancing the enforcement of Union law requires a broad definition of retaliation, encompassing any act or omission ***occurring in the work-related context*** which causes them detriment.

Amendment

(31) Retaliation expresses the (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person, so that this person can enjoy legal protection. Effective protection of reporting persons as a means of enhancing the enforcement of Union law requires a broad definition of retaliation, encompassing any act or omission which causes them detriment.

Amendment 19

Proposal for a directive Recital 33

Text proposed by the Commission

(33) Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection ***to whistleblowers*** from retaliation ***increases the legal certainty of (potential) whistleblowers and thereby encourages and facilitates whistleblowing also to the media.*** In this respect, protection of whistleblowers as journalistic sources is

Amendment

(33) Whistleblowers are, in particular, important sources for investigative journalists. ***Therefore, it is essential to create a safe environment,*** providing ***whistleblowers and the media*** with effective protection from retaliation. In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of

crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies.

investigative journalism in democratic societies. ***In this context also, investigative journalists who use whistleblower sources should themselves be given the same protection as their whistleblower sources.***

Amendment 20

Proposal for a directive Recital 33 a (new)

Text proposed by the Commission

Amendment

(33 a) In accordance with Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC), (‘the Staff Regulations’) ^{1a}, all Union institutions are required to adopt and implement internal rules protecting whistleblowers.

^{1a} 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).

Amendment 21

Proposal for a directive Recital 34

Text proposed by the Commission

Amendment

(34) It is for the Member States to identify the authorities competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive. These may be regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent shall have the necessary capacities and powers to assess the

(34) It is for the Member States to identify the authorities competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive, ***which also guarantee the highest possible level of independence and impartiality.*** These may be regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as

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.

competent shall ***be independent and shall*** have the necessary capacities and powers to assess the accuracy of the allegations made in the report and to address the breaches reported, including by launching an investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate. ***It is imperative that they be provided with sufficient budgetary resources.***

Amendment 22

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34 a) In addition to the competent authorities identified by Member States, there is also a need to establish an independent information-gathering, advisory and referral Union body, which is in a position to receive reports of irregularities, with sufficient budgetary resources, adequate competences and appropriate specialists, in order to help internal and external whistleblowers in using the right channels to disclose their information on possible breaches of Union law, while protecting the confidentiality of such whistleblowers and offering them the support and advice they need. The European Ombudsman has already offered to accommodate such a body.

Amendment 23

Proposal for a directive Recital 37

Text proposed by the Commission

Amendment

(37) For the effective detection and prevention of breaches of Union law it ***is vital that*** the relevant information reaches

(37) For the effective detection and prevention of breaches of Union law it ***can be beneficial when*** the relevant

swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

Amendment 24

Proposal for a directive

Recital 40

Text proposed by the Commission

(40) ***It should be clear that, in the case of private legal entities which do not provide for internal reporting channels, reporting persons should be able to report*** directly externally to the competent authorities and such persons should enjoy the protection against retaliation provided by this Directive.

Amendment 25

Proposal for a directive

Recital 42

Text proposed by the Commission

(42) Provided the confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee confidentiality of the identity of the reporting person.

information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.

Amendment

(40) Reporting persons should ***always have the option of reporting*** directly externally to the competent authorities and such persons should enjoy the protection against retaliation provided by this Directive.

Amendment

(42) Provided the ***anonymity or*** confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee ***anonymity nor*** confidentiality of the identity of the reporting person.

Amendment 26

Proposal for a directive Recital 43

Text proposed by the Commission

(43) Third parties may also be authorised to receive reports on behalf of private and public entities, provided they offer appropriate guarantees of respect for independence, confidentiality, data protection and secrecy. These can be external reporting platform providers, external counsel or auditors or trade union representatives.

Amendment

(43) Third parties may also be authorised to receive reports on behalf of private and public entities, provided they offer appropriate guarantees of respect for independence, confidentiality, data protection and secrecy. These can be **journalists**, external reporting platform providers, external counsel or auditors or trade union representatives.

Amendment 27

Proposal for a directive Recital 44

Text proposed by the Commission

(44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality reports by the employees of the entity and of its subsidiaries or 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 **and with respect of anonymity if appropriate** reports by the employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

Amendment 28

Proposal for a directive Recital 45

Text proposed by the Commission

(45) The most appropriate persons or departments within a private legal entity to

Amendment

(45) The most appropriate persons or departments within a private legal entity to

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

Amendment 29

Proposal for a directive Recital 47

Text proposed by the Commission

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable 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.

be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of interest and independence. ***For these subjects, a civil liability regime should be provided in case of wilful misconduct or gross negligence.***

Amendment

(47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. ***To this end, they should be able to consult and seek advice from the national competent authority and the Union referral body.*** Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. ***They should also provide information on rights guaranteed to whistleblowers, particularly their right to disclosure provided for in this Directive, and their right to turn to civil society organisations involved in whistleblower protection to this end, specifically those that provide strategic and legal advice to whistleblowers, as well as to journalists.*** Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such

information may be posted at a visible location accessible to all these persons and to the web of the entity and may also be included in courses and trainings on ethics and integrity.

Amendment 30

Proposal for a directive Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) In all cases, the reporting person should be informed of the investigation progress and should be able to access the draft report at least once so as to be able to revise it, comment on it and correct it if necessary, albeit with no obligation to do so. These comments should be incorporated and taken into account in the monitoring of the investigation. The reporting person should be informed of the investigation outcome and should be able to revise and comment on the final report of the investigation. These comments should be included in the final report.

Amendment 31

Proposal for a directive Recital 49

Text proposed by the Commission

Amendment

(49) Lack of confidence in the ***usefulness*** of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and

(49) ***Along with the very real and very reasonable fear of retaliation***, lack of confidence in the ***effectiveness*** of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other

possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.

grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.

Amendment 32

Proposal for a directive Recital 51

Text proposed by the Commission

(51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to relevant bodies, offices or agencies of the Union, including, for the purposes of this Directive, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor Office (EPPO), without prejudice to the possibility for the reporting person to refer directly to such bodies, offices or agencies of the Union.

Amendment

(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.***

Amendment 33

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 to the necessity and proportionality of the obligation to disclose information when

Amendment

(55) Member States should ensure that competent authorities have in place adequate protection procedures for the processing of reports of infringements and for the protection of the personal data of the persons referred to in the report. Such procedures ***should also be established for the Union referral body and*** should ensure that the identity of every reporting person, concerned person, and third persons referred to in the report (e.g. witnesses or colleagues) is protected at all stages of the procedure. This obligation should be without prejudice to the necessity and

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.

proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the concerned person.

Amendment 34

Proposal for a directive Recital 56

Text proposed by the Commission

(56) It is necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information provided by a reporting person to the competent authority comply with the duty of professional secrecy and the confidentiality when transmitting the data both inside and outside of the competent authority, including where a competent authority opens an investigation or an inquiry or subsequent enforcement activities in connection with the report of infringements.

Amendment

(56) It is necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information provided by a reporting person to the competent authority comply with the duty of professional secrecy and the confidentiality when transmitting the data both inside and outside of the competent authority, including where a competent authority opens an investigation or an inquiry or subsequent enforcement activities in connection with the report of infringements. ***The same necessity exists for staff members of the Union referral body.***

Amendment 35

Proposal for a directive Recital 57

Text proposed by the Commission

(57) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate.

Amendment

(57) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate, ***respecting the privacy of the reporter.***

Amendment 36

Proposal for a directive

Recital 58

Text proposed by the Commission

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

Amendment

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

Amendment 37

Proposal for a directive

Recital 59

Text proposed by the Commission

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them should guarantee that those procedures are adequate and thus serving their purpose.

Amendment

(59) The regular review of the procedures of competent authorities and the exchange of good practices between them ***and competent civil society organisations*** should guarantee that those procedures are adequate and thus serving their purpose.

Amendment 38

Proposal for a directive Recital 61

Text proposed by the Commission

(61) *The requirement of a tiered use of reporting channels, as a general rule, is necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case. Moreover, it is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights⁵⁷.*

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

Amendment

(61) It is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights⁵⁷.

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

Amendment 39

Proposal for a directive Recital 62

Text proposed by the Commission

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

Amendment

(62) **Reporting** persons should **be able to** first use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry), **or that the reporting persons fear that the use of such channels exposes them to the risk of retaliation or might otherwise hinder the reporting.**

Amendment 40

Proposal for a directive

Recital 63

Text proposed by the Commission

(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. **In all such cases**, persons

Amendment

(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; **where they believe the internal channels lack independence**; that their confidentiality would not be protected; that the ultimate responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the

reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union shall be protected. **Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services.**

environment. **If internal channels are unavailable or do not function properly, or if reporting persons choose not to use such channels,** persons reporting externally to the competent authorities, **the Union referral body** and, where relevant, to **other** bodies, offices or agencies of the Union shall be **equally** protected.

Amendment 41

Proposal for a directive Recital 65

Text proposed by the Commission

(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken by their employer or customer/recipient of services and by persons working for or acting on 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. **Protection against retaliation should also be granted to natural or legal persons closely linked to the reporting person, irrespective of the nature of the activities, and whether they are paid or not.** Indirect retaliation also

includes actions taken against relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and representatives *of those* who have provided support to the reporting person.

Amendment 42

Proposal for a directive

Recital 66

Text proposed by the Commission

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

Amendment

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

Amendment 43

Proposal for a directive

Recital 67

Text proposed by the Commission

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

Amendment

(67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States *and relevant bodies, offices or agencies of the Union, as well as the Union referral body* should ensure that relevant information is provided in a user-friendly way and is easily accessible to the general public *and support the work of CSOs providing this information*. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which

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.

reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice *anonymously* can help ensure that reports are made through the appropriate *safe and confidential* channels and that breaches and wrongdoings are detected in a timely manner or even prevented.

Amendment 44

Proposal for a directive Recital 69

Text proposed by the Commission

(69) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude *workers* from reporting, to deny protection or to penalise them for having done so. At the same time, this Directive should not affect the protection of legal and other professional privilege as provided for under national law.

Amendment

(69) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude *persons* from reporting, to deny protection or to penalise them for having done so. At the same time, this Directive should not affect the protection of legal and other professional privilege as provided for under national law.

Amendment 45

Proposal for a directive Recital 70

Text proposed by the Commission

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or

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

disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

Amendment 46

Proposal for a directive Recital 74

Text proposed by the Commission

(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council⁵⁸ ***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.

⁵⁸ 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

a report or disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

Amendment

(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. ***The protection of whistleblowers provided for in this Directive should prevail over*** Directive (EU) 2016/943 of the European Parliament and of the Council⁵⁸ ***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.

⁵⁸ 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

Amendment 47

Proposal for a directive Recital 75

Text proposed by the Commission

(75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council⁵⁹ 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.

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

Amendment 48

Proposal for a directive Recital 78

Text proposed by the Commission

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. ***Penalties***

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 Council⁵⁹ and more generally support to those who are in serious financial need ***is key*** for the effective enforcement of their rights to protection.

⁵⁹ 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

(78) Penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions.

against persons who make a report or disclosure demonstrated to be knowingly false are necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.

Amendment 49

Proposal for a directive

Recital 84

Text proposed by the Commission

(84) The objective of this Directive, namely to strengthen enforcement *in certain policy areas and acts* where breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – introductory part

Text proposed by the Commission

1. With a view to enhancing the enforcement of Union law and policies *in specific areas*, this Directive lays down

Amendment

(84) The objective of this Directive, namely to strengthen enforcement where breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

Amendment

1. With a view to enhancing the enforcement of Union law and policies this Directive lays down common minimum

common minimum standards for the protection of persons reporting on the following unlawful activities or abuse of law:

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

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point a – point ii

Text proposed by the Commission

(ii) financial services, prevention of money laundering *and* terrorist financing;

Amendment

(ii) financial services, prevention of money laundering, terrorist financing *corruption and financing of organized crime*;

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point a – point viii

Text proposed by the Commission

(viii) public health;

Amendment

(viii) public health *or public safety*;

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point a – point x a (new)

Text proposed by the Commission

Amendment

(xa) *employment and working conditions*;

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point a – point x b (new)

Text proposed by the Commission

Amendment

(xb) *tax fraud, tax evasion and tax optimisation*;

Amendment 55

Proposal for a directive
Article 1 – paragraph 1 – point a – point x c (new)

Text proposed by the Commission

Amendment

(xc) violations of human rights or of the rights enshrined in the European Charter of Fundamental Rights;

Amendment 56

Proposal for a directive
Article 1 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, as regards acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law.

(d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, **particularly** as regards acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law.

Amendment 57

Proposal for a directive
Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not regulated in those sector-specific Union acts.

2. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not regulated in those sector-specific Union acts. ***This paragraph shall apply only in cases where the protection foreseen in sector-specific acts is higher than the one guaranteed by this directive.***

Amendment 58

Proposal for a directive
Article 2 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 59

Proposal for a directive

Article 2 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) This Directive shall also apply to Union staff members, as defined within the Union Staff Regulation;

Amendment 60

Proposal for a directive

Article 2 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive shall also apply to reporting persons whose work-based relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other pre-contractual negotiation.

2. This Directive shall also apply to reporting persons whose work-based relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other pre-contractual negotiation, **or even to reporting persons whose employment relationship is terminated.**

Amendment 61

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 62

Proposal for a directive

Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. *This Directive shall also apply to legal and natural person associated with a reporting person if such person makes probable that he or she suffered a detriment due to his or her connection to a reporting person.*

Amendment 63

Proposal for a directive

Article 2 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. *This Directive shall also apply to legal and natural person who makes probable that he or she suffered a detriment due to the fact that he or she was believed to be a reporting person or an associated person.*

Amendment 64

Proposal for a directive

Article 3 – paragraph 1 – point 5

Text proposed by the Commission

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;

Amendment 65

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

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

information on breaches *acquired in the context of his or her work-related activities*;

information on breaches;

Amendment 66

Proposal for a directive

Article 3 – paragraph 1 – point 10

Text proposed by the Commission

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

Amendment

(10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches.

Amendment 67

Proposal for a directive

Article 3 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is associated;

Amendment

(11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is *or has been* associated;

Amendment 68

Proposal for a directive

Article 3 – paragraph 1 – point 12

Text proposed by the Commission

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

Amendment

(12) ‘retaliation’ means any threatened or actual act or omission prompted by the internal or external reporting *or disclosure* which causes or may cause unjustified detriment to the reporting person, *to his or her colleagues, relatives and to persons facilitating the reporting, such as intermediaries and investigative journalists, even after the termination of*

the employment relationship;

Amendment 69

Proposal for a directive

Article 3 – paragraph 1 – point 14

Text proposed by the Commission

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

Amendment

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

Amendment 70

Proposal for a directive

Article 3 – paragraph 1 – point 14 a (new)

Text proposed by the Commission

Amendment

(14 a) ‘Union referral body’ means an independent European information-gathering, advisory and referral body, which is in a position to receive reports in accordance with Chapter III, and to help internal and external whistleblowers in using the right channels to report and disclose their information on possible breaches of Union law, while protecting the confidentiality of such whistleblowers and offering them the support and advice they need.

Amendment 71

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with

Amendment

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, ***and protecting reporting***

social partners, *if appropriate*.

persons, following consultations with social partners *and civil society organisations*. As laid down in Articles 22a, 22b and 22c of Regulation No 31 (EEC), 11 (EAEC), the obligation to establish channels and procedures for reporting and following up on reports shall apply also to European Union institutions, agencies and bodies.

Amendment 72

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 73

Proposal for a directive Article 4 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) private legal entities of any size whose conducted activities are likely to constitute a danger to the environment or to public health.

Amendment 74

Proposal for a directive Article 4 – paragraph 6 – introductory part

Text proposed by the Commission

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

Amendment

6. The legal entities in the public sector referred to in paragraph 1 shall ***include, in particular,*** the following:

Amendment 75

Proposal for a directive

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

Text proposed by the Commission

Amendment

(da) Union institutions, agencies and bodies.

Amendment 76

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) **independent** 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**;

Amendment 77

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Amendment 78

Proposal for a directive

Article 5 – paragraph 1 – point e

Text proposed by the Commission

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,

(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.

offices or agencies of the Union ***and to the Union referral body.***

Amendment 79

Proposal for a directive

Article 5 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the prompt acknowledgement of receipt of written reports to the postal or electronic address indicated by the reporting person

Amendment 80

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded; ***in case the phone conversation is recorded, the prior consent of the reporting person is necessary;***

Amendment 81

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) physical meetings with the person or department designated to receive reports ***accompanied, if the reporting person requests it, by a union representative, by a representative of civil society or his/her legal representative.***

Amendment 82

Proposal for a directive

Article 5 – paragraph 3 a (new)

3a. *Member States shall ensure the protection of report to an employer other than his or her direct employer where there are multiple organisations or employers involved and the worker reasonably believes the information relates solely or mainly to the conduct of that person or organisation, or is a matter for which that person or organisation has legal responsibility. Any such disclosure shall be treated as internal reporting.*

Amendment 83

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall designate the authorities competent to receive and handle reports.

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

Amendment 84

Proposal for a directive Article 6 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

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

Amendment 85

Proposal for a directive Article 6 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding ***three months or six months in***

(b) ***acknowledge receipt of the report within 5 working days***, give feedback to the reporting person about the follow-up of the report within a reasonable timeframe

duly justified cases;

not exceeding *two* months;

Amendment 86

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that any authority which has received a report but does not have the competence to address the breach reported transmits it to the competent authority and that the reporting person is informed.

Amendment

4. Member States shall ensure that any authority which has received a report but does not have the competence to address the breach reported transmits it to the competent authority and that the reporting person is informed. ***Member States shall ensure that competent authorities receiving reports they do not have competence to address have clear procedures for handling all disclosed information securely with due regard to confidentiality.***

Amendment 87

Proposal for a directive Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6 a

Union referral body

1. The Commission shall set up an independent European authority responsible for receiving and handling reports at Union level, and for guaranteeing the protection of whistleblowers. That authority shall be called the Union referral body and shall be associated with the Office of the European Ombudsman.

2. The Union Referral body may be consulted directly by:

a) staff members of the Union and the European Atomic Energy Community reporting information on breaches and those who facilitate the reporting by such staff members, such as intermediaries and

investigative journalists;

b) persons reporting information on any breaches involving Union institutions agencies or bodies, as well as those facilitating the reporting by such persons, such as intermediaries and investigative journalists;

c) competent authorities.

3. The Union referral body shall:

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

b) establish an independent, autonomous, secure and confidential reporting channel for receiving and handling information provided by reporting persons;

c) inform reporting persons of any follow up on the report in a reasonable timeframe not exceeding three months or six months in duly justified cases;

d) transmit the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under Union law.

Amendment 88

Proposal for a directive

Article 7 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) they guarantee free and independent advice and legal support for reporting persons and intermediaries.

Amendment 89

Proposal for a directive

Article 7 – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

(c) physical meeting with dedicated staff members of the competent authority ***accompanied, if the reporting person requests it, by a union representative by a representative of civil society or his/her legal representative.***

Amendment 90

**Proposal for a directive
Article 7 – paragraph 4**

Text proposed by the Commission

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

Amendment

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

Amendment 91

**Proposal for a directive
Article 8 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that competent authorities have staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.

Amendment

1. Member States ***and the Commission*** shall ensure that competent authorities ***and the Union referral body*** have ***an adequate number of competent*** staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.

Amendment 92

**Proposal for a directive
Article 8 – paragraph 2 – point a**

Text proposed by the Commission

a) providing any interested person

Amendment

a) providing any interested person

with information on the procedures for reporting;

with information on the procedures for reporting ***and on the protection to which he or she is entitled under this Directive;***

Amendment 93

Proposal for a directive

Article 8 – paragraph 2 – point c

Text proposed by the Commission

c) maintaining contact with the reporting person for the purpose of informing ***the reporting person*** of the progress and the outcome of the investigation.

Amendment

c) maintaining contact with the reporting person ***and, whenever relevant, those facilitating the reporting, such as intermediaries and investigative journalists,*** for the purpose of informing ***them*** of the progress and the outcome of the investigation.

Amendment 94

Proposal for a directive

Article 9 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

b) a reasonable timeframe, not exceeding three months or six months in duly justified cases, for giving feed-back to the reporting person ***and, whenever relevant, to those facilitating the reporting, such as intermediaries and investigative journalists,*** about the follow-up of the report and the type and content of this feed-back;

Amendment 95

Proposal for a directive

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

Member States ***and the Commission*** shall ensure that competent authorities ***and the Union referral body*** publish on their websites in a separate, easily identifiable and accessible section at least the

following information:

Amendment 96

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that competent authorities keep records of every report received.

Amendment

1. Member States **and the Commission** shall ensure that competent authorities **and the Union referral body** keep records of every report received.

Amendment 97

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

Amendment

2. Competent authorities **and the Union referral body** shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority **or Union referral body** reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

Amendment 98

Proposal for a directive Article 11 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent authority shall have the right to document the oral reporting in one of the following ways:

Amendment

Where a recorded telephone line is used for reporting, subject to the consent of the reporting person **and on condition that the necessary confidentiality is maintained**, the competent authority **and Union referral body** shall have the right to document the oral reporting in one of the following ways:

Amendment 99

Proposal for a directive Article 11 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 100

Proposal for a directive Article 11 – paragraph 5 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 101

Proposal for a directive Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

The competent authority shall offer the possibility to the reporting person to check,

Amendment

The competent authority **and the Union referral body** shall offer the possibility to

rectify and agree with the minutes of the meeting by signing them.

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

Amendment 102

Proposal for a directive

Article 12 – title

Text proposed by the Commission

Review of the procedures by competent authorities

Amendment

Review of the procedures by competent authorities *and the Union referral body*

Amendment 103

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly.

Amendment

Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly. *Similarly, the Commission shall review the functioning of the Union referral body regularly, and at least once every two years.*

Amendment 104

Proposal for a directive

Article 13 – title

Text proposed by the Commission

Conditions for the protection of reporting persons

Amendment

Conditions for the protection of reporting persons *and those facilitating the reporting*

Amendment 105

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. A reporting person shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive.

Amendment

1. A reporting person ***or a person facilitating the reporting*** shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive ***regardless of the reporting channel chosen.***

Amendment 106

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

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

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

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

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

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

Amendment

deleted

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

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

Amendment 107

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 108

Proposal for a directive Article 13 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. A person making a report or a disclosure anonymously and who subsequently has been identified shall qualify for protection as laid down in this Directive under the same conditions as a person who identified themselves when making a report or a disclosure.

Amendment 109

Proposal for a directive Article 14 – title

Text proposed by the Commission

Amendment

Prohibition of retaliation against reporting persons

Prohibition of retaliation against reporting persons ***and those facilitating the reporting***

Amendment 110

Proposal for a directive

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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:

Amendment 111

Proposal for a directive

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Duty of maintaining the confidentiality of the identity of reporting persons

- 1. The identity of a reporting person may not be disclosed without the individual's explicit consent. This includes information that may be used to discover the identity of the reporting person.***
- 2. Any person who learns about the data referred to in paragraph 1 of this Article shall be required to protect such data.***
- 3. Circumstances under which the confidential data of a reporting person may be disclosed are limited to cases***

where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

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

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

Amendment 112

Proposal for a directive Article 15 – title

Text proposed by the Commission

Measures for the protection of reporting persons against retaliation

Amendment

Measures for the protection of reporting persons ***and those facilitating the reporting*** against retaliation

Amendment 113

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.

Amendment

1. Member States ***and the Commission*** shall take the necessary measures to ensure the protection of reporting persons ***and those facilitating the reporting*** meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those

set out in paragraphs 2 to 8.

Amendment 114

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.

Amendment

2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation. ***This role should be independent and could be performed by civil society organisations and/or trade unions.***

Amendment 115

Proposal for a directive Article 15 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 116

Proposal for a directive Article 15 – paragraph 4

Text proposed by the Commission

4. Persons reporting externally to competent authorities or making a public disclosure in accordance with this Directive shall not be considered to have breached any restriction on disclosure of information imposed by contract or by any

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

legislative, regulatory or administrative provision, and incur liability of any kind in respect of such disclosure.

imposed by contract or by any legislative, regulatory or administrative provision, and incur liability of any kind in respect of such disclosure.

Amendment 117

Proposal for a directive Article 15 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Reporting persons ***and those facilitating the reporting*** shall have access to remedial measures against retaliation ***covering all direct, indirect, and future consequences of any detriment, including,*** as appropriate,

(a) making any provision to act taken in breach of Article 14 void;

(b) the reinstatement of the reporting person with equal salary, status, duties and working conditions;

(c) the transfer of the reporting person to a new department or supervisor;

(d) compensation for pain and suffering;

(e) interim relief pending the resolution of legal proceedings.

Amendment 118

Proposal for a directive Article 15 – paragraph 7

Text proposed by the Commission

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

Amendment

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

disclosure in accordance with this Directive to seek dismissal.

disclosure in accordance with this Directive to seek dismissal. ***The reporting persons shall benefit from the best protective measures in Member States where the entity in question, or the group of which it is a subsidiary, are located wherever relevant.***

Amendment 119

Proposal for a directive Article 15 – paragraph 8

Text proposed by the Commission

8. In addition to providing legal aid to reporting persons in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council⁶³, 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.

⁶³ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

Amendment 120

Proposal for a directive Article 17 – paragraph 1 – point d

Text proposed by the Commission

d) breach the duty of maintaining the confidentiality of the identity of reporting persons.

Amendment 121

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 Council⁶³, 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.

⁶³ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

Amendment

d) breach the duty of maintaining the confidentiality of the identity of reporting persons ***or of persons facilitating the reporting.***

Proposal for a directive
Article 17 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) do not fulfil their obligation to follow-up on a report;

Amendment 122

Proposal for a directive
Article 17 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) do not fulfil their obligation to provide feedback to the reporting person about the follow-up on the report.

Amendment 123

Proposal for a directive
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 124

Proposal for a directive
Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

No Waiver of Rights and Remedies
The rights and remedies provided for under this Directive may not be waived or limited by any agreement, policy, form or condition of employment, including by

any pre-dispute arbitration agreement. Any attempt to waive or limit these rights and remedies shall be considered void and unenforceable and may be subject to penalty or sanction.

Amendment 125

Proposal for a directive Article 22 a (new)

Text proposed by the Commission

Amendment

Article 22a

Updating the Annexes

Whenever a new Union legal act falls into the material scope laid down in Article 1 (1) (a) or Article 1 (2), the Commission shall update the Annexes accordingly by means of a delegated act.

Amendment 126

Proposal for a directive Annex I – part II – subpart C a (new)

Text proposed by the Commission

Amendment

Ca D.– protection of the Union’s financial interests;

(i) Regulation (EU, EURATOM) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | |
|---|---|
| Title | Protection of persons reporting on breaches of Union law |
| References | COM(2018)0218 – C8-0159/2018 – 2018/0106(COD) |
| Committee responsible Date announced in plenary | JURI 28.5.2018 |
| Opinion by Date announced in plenary | CONT 28.5.2018 |
| Rapporteur Date appointed | Dennis de Jong 3.5.2018 |
| Date adopted | 27.9.2018 |
| Result of final vote | +: 16 -: 1 0: 4 |
| Members present for the final vote | Inés Ayala Sender, Jonathan Bullock, Tamás Deutsch, Luke Ming Flanagan, Ingeborg Gräßle, Cătălin Sorin Ivan, Wolf Klinz, Arndt Kohn, Bogusław Liberadzki, Monica Macovei, Gilles Pargneaux, Georgi Pirinski, José Ignacio Salafranca Sánchez-Neyra, Claudia Schmidt, Bart Staes, Indrek Tarand, Marco Valli, Joachim Zeller, Dennis de Jong |
| Substitutes present for the final vote | Richard Ashworth, Karin Kadenbach |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 16 | + |
|-----------|--|
| ALDE | Wolf Klinz |
| ECR | Monica Macovei |
| EFDD | Marco Valli |
| GUE/NGL | Luke Ming Flanagan, Dennis de Jong |
| PPE | Ingeborg Gräßle, Claudia Schmidt |
| S&D | Inés Ayala Sender, Karin Kadenbach, Arndt Kohn, Bogusław Liberadzki, Gilles Pargneaux, Georgi Pirinski |
| VERTS/ALE | Bart Staes, Indrek Tarand |
| NI | Cătălin Sorin Ivan |

| 1 | - |
|------|------------------|
| EFDD | Jonathan Bullock |

| 4 | 0 |
|-----|--|
| PPE | Richard Ashworth, Tamás Deutsch, José Ignacio Salafranca Sánchez-Neyra, Joachim Zeller |

Key to symbols:

+ : in favour

- : against

0 : abstention