



02.7.2018

*****I**

DRAFT REPORT

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

Committee on Legal Affairs

Rapporteur: Virginie Rozière

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0218),
 - having regard to Article 294(2) and Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207 and 325(4) of the Treaty on the Functioning of the European Union and Article 31 of the Treaty establishing the European Atomic Energy Community, pursuant to which the Commission submitted the proposal to Parliament (C8-0159/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - Having regard to the opinion of the Court of Auditors of ...¹,
 - having regard to the opinion of the European Economic and Social Committee of ...²,
 - having regard to the opinion of the Committee of the Regions of ...³,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Culture and Education, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Constitutional Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the

¹ OJ C ...

² OJ C ...

³ OJ C ...

national parliaments.

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 exposing and preventing ***acts prejudicial to the public interest and*** breaches of the law and in safeguarding the welfare of society ***as well as freedom of expression and of information***. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation.

Or. fr

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) In certain policy areas, breaches of Union law may cause ***serious*** harm to the public interest, in the sense of creating significant risks for the welfare of society. Where weaknesses of enforcement have been identified in those areas, and whistleblowers are in a privileged position to disclose breaches, it is necessary to enhance enforcement by ensuring effective protection of whistleblowers from retaliation and introducing effective reporting channels.

Amendment

(3) In certain policy areas, breaches of Union law may cause harm to the public interest, in the sense of creating significant risks for the welfare of society. Where weaknesses of enforcement have been identified in those areas, and whistleblowers are in a privileged position to disclose breaches, it is necessary to enhance enforcement by ensuring effective protection of whistleblowers from retaliation and introducing effective reporting channels.

Or. fr

Amendment 3

Proposal for a directive Recital 5

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 4

Proposal for a directive Recital 10

Text proposed by the Commission

(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment remain a challenge and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018⁴⁰. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection⁴¹, the introduction of such protection appears necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause *serious* harm to the public interest with possible spill-over impacts across national borders. This is also relevant in cases where unsafe products can cause environmental harm.

Amendment

(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment remain a challenge and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018⁴⁰. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection⁴¹, the introduction of such protection appears necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause harm to the public interest with possible spill-over impacts across national borders. This is also relevant in cases where unsafe products can cause environmental harm.

⁴⁰ COM(2018) 10 *final*.

⁴¹ Directive 2013/30/EU of the European Parliament and of the Council, of 12 June 2013, on safety of offshore oil and gas operations (OJ L 178, p. 66).

⁴⁰ COM(2018)0010.

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

Or. fr

Amendment 5

Proposal for a directive Recital 14

Text proposed by the Commission

(14) The protection of privacy and personal data is another area where whistleblowers are in a privileged position to disclose breaches of Union law which can *seriously* harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems⁴⁵, which introduces notification of incidents (including those that do not compromise personal data) and security requirements for entities providing essential services across many sectors (e.g. energy, health, transport, banking, etc.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable to prevent security incidents that would affect key economic and social activities and widely used digital services. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.

⁴⁵ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and

Amendment

(14) The protection of privacy and personal data is another area where whistleblowers are in a privileged position to disclose breaches of Union law which can harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems⁴⁵, which introduces notification of incidents (including those that do not compromise personal data) and security requirements for entities providing essential services across many sectors (e.g. energy, health, transport, banking, etc.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable to prevent security incidents that would affect key economic and social activities and widely used digital services. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.

⁴⁵ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and

information systems across the Union.

information systems across the Union (*OJ L 194, 19.7.2016, p. 1*).

Or. fr

Amendment 6

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 7

Proposal for a directive Recital 26

Text proposed by the Commission

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-

(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. **Public officials and civil servants, including those of institutional, constitutional and military bodies, should**

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.

therefore fully benefit from the protection provided for in this Directive. Protection should 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.

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.

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

Or. fr

Amendment 8

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

Amendment

(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being ‘workers’ within the meaning of Article 45 TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For

instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation *in* the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation, *which may take* the form, *for instance*, of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

Or. fr

Amendment 9

Proposal for a directive Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Officials and other servants of the European Union, as defined by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union,

laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68^{1a}, may, in the course of their professional activities, be privy to information which could give rise to whistleblowing as envisaged under this Directive. They are therefore crucial actors in uncovering acts prejudicial to the public interest, including at EU level, and in ensuring the proper application of the law, in particular in protecting the EU's financial interests. It would also appear that staff at the EU institutions could be victims of retaliation and should therefore enjoy the same protection afforded to other workers under this Directive.

1a OJ L 56, 4.3.1968, p. 1.

Or. fr

Amendment 10

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) Similarly, it is important to ensure protection for those assisting the whistleblower in the process, for example, by providing advice on how to proceed, the proper channels for reporting, the protections available, or what wording to use in the report. These persons may be made privy to the information uncovered and may therefore also be victims of retaliation. They should, as such, benefit from the protection provided for by this Directive. Investigative journalists also play a fundamental role as intermediaries, particularly in the case of public disclosure. They must therefore also be protected so as to safeguard freedom of expression.

Amendment 11**Proposal for a directive****Recital 29***Text proposed by the Commission*

(29) Effective detection and prevention of *serious* harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but also abuse of law, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law.

Amendment

(29) Effective detection and prevention of harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but also abuse of law, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law ***and, more generally, any act of wrongdoing that is prejudicial to the public interest.***

Or. fr

Amendment 12**Proposal for a directive****Recital 30***Text proposed by the Commission*

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of information which is already in the public domain or of unsubstantiated rumours and hearsay.

Amendment

(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of information which is already ***manifestly*** in the public domain or of unsubstantiated rumours and hearsay.

Or. fr

Amendment 13

Proposal for a directive

Recital 31

Text proposed by the Commission

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

Amendment

(31) Retaliation expresses the close (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person, so that this person can enjoy legal protection. Effective protection of reporting persons as a means of enhancing the enforcement of Union law requires a broad definition of retaliation, encompassing any act or omission occurring in the work-related context which causes them detriment. ***This definition cannot, by nature, be made up of an open list of examples, since the forms of retaliation are limited only by the imaginations of the perpetrators of such acts.***

Or. fr

Amendment 14

Proposal for a directive

Recital 35

Text proposed by the Commission

(35) Union law in specific areas, such as market abuse⁵³, civil aviation⁵⁴ or safety of offshore oil and gas operations⁵⁵ already provides for the establishment of internal and external reporting channels. The obligations to establish such channels laid down in this Directive should build as far as possible on the existing channels provided by specific Union acts.

Amendment

(35) Union law in specific areas, such as market abuse⁵³, civil aviation⁵⁴ or safety of offshore oil and gas operations⁵⁵ already provides for the establishment of internal and external reporting channels. The obligations to establish such channels laid down in this Directive should build as far as possible on the existing channels provided by specific Union acts. ***In the absence of such provisions and where the rules laid down in this Directive afford***

greater protection, the latter rules should apply.

⁵³ Cited above.

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

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

⁵³ Cited above.

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

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

Or. fr

Amendment 15

Proposal for a directive Recital 44 a (new)

Text proposed by the Commission

Amendment

(44a) It has been proven that keeping the reporting person's identity confidential is an essential element in avoiding backsliding and self-censorship mechanisms. This duty of confidentiality should, therefore, only be waived in exceptional circumstances in which disclosure of information germane to the reporting person's personal data is a necessary and proportionate obligation required under Union or national law in the context of subsequent investigations or judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and

in each case subject to appropriate safeguards under such laws. Appropriate sanctions should be provided for in the event of breaches of the duty of confidentiality concerning the whistleblower's identity.

Or. fr

Amendment 16

Proposal for a directive Recital 44 b (new)

Text proposed by the Commission

Amendment

(44b) Arrangements for anonymous reporting or disclosure shall be in place and anonymous reporting or disclosure shall not be prohibited. While this Directive does not intend to regulate the arrangements for such reporting or public disclosure, they shall not be excluded entirely from its scope. Thus, in cases where reporting persons wish to remain anonymous, their identity must not be disclosed. However, in the event that their identity is revealed, they should be eligible for protection under this Directive and the confidentiality of their identity should continue to be ensured.

Or. fr

Amendment 17

Proposal for a directive Recital 61

Text proposed by the Commission

Amendment

(61) The **requirement** of a tiered use of reporting channels, as a general rule, is **necessary to ensure** that the information gets to the persons who can contribute to

(61) The **use** of a tiered use of **internal** reporting channels, as a general rule, is **effective in ensuring** 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);

the early and effective resolution of risks to the public interest. At the same time, *it is necessary to ensure a high degree of flexibility that allows* 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, *media freedom* and *the right to information*, 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);

Or. fr

Amendment 18

Proposal for a directive Recital 62

Text proposed by the Commission

(62) As a rule, reporting persons *should* first use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities

Amendment

(62) As a rule, reporting persons *tend* first *to* use the internal channels at their disposal and report to their employer. However, it may be the case that internal channels do not exist (in case of entities

which are not 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).

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. fr

Amendment 19

Proposal for a directive Recital 63

Text proposed by the Commission

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

Amendment

(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised, ***that it is in the public interest that the public be kept informed*** 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. Persons reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union ***should therefore*** be protected ***if they deem it more appropriate to report externally***).

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.

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.

Or. fr

Amendment 20

Proposal for a directive Recital 64

Text proposed by the Commission

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

Amendment

(64) Persons making a ***direct*** public disclosure, ***when they deem this necessary, should also qualify for protection***

Or. fr

Amendment 21

Proposal for a directive Recital 64 a (new)

Text proposed by the Commission

Amendment

(64a) Protecting whistleblowers helps prevent and remedy acts prejudicial to the public interest. While it is important to define a coherent and robust system for reporting infringements under this Directive, the system should, at heart, be based on the relevance and usefulness of the information reported to the organisation concerned, the competent authorities or the public. It must therefore be ensured that the protection provided for in this Directive is afforded to any persons making a report or disclosure as defined in this Directive, and no argument may be used to deny them such protection.

Or. fr

Amendment 22

Proposal for a directive Recital 65

Text proposed by the Commission

Amendment

(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken by their employer or customer/recipient of services and by persons working for or acting on behalf of the latter, including co-workers and managers in the same organisation or in other organisations with which the reporting person is in contact in the context of his/her work-related activities, where retaliation is recommended or tolerated by the concerned person. Protection should be provided against retaliatory measures taken vis-à-vis the reporting person him/herself but also those that may be taken vis-à-vis

(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.

the legal entity he/she represents, such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against *facilitators or* relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.

Or. fr

Amendment 23

Proposal for a directive

Recital 67

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 24

Proposal for a directive Recital 67 a (new)

Text proposed by the Commission

Amendment

(67a) In Member States which provide extensive protection for whistleblowers, there are a variety of mechanisms in place to accompany and support whistleblowers. In some cases, a competent authority affiliated to the public authorities may provide advice, in others civil society plays an important role. With a view to ensuring flexibility, so as to allow for different circumstances in different Member States, it should be possible for individual advice to be dispensed by an independent authority, a workers' representative or a qualified body designated by the Member State, provided that sufficient guarantees are supplied.

Or. fr

Amendment 25

Proposal for a directive Recital 70

Text proposed by the Commission

Amendment

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then

(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he/she made a report or disclosure in line with this Directive and suffered a detriment, the ***presumption shall be that the detriment was suffered as a result of retaliatory measures.*** The burden

demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

of proof should shift to the person who took the detrimental action, who should then demonstrate that their the action taken was not linked in any way to the reporting or the disclosure.

Or. fr

Amendment 26

Proposal for a directive Recital 75 a (new)

Text proposed by the Commission

Amendment

(75a) Similarly, pressure, the effects of retaliation or bullying, loss of confidence and fear for the future can destabilise the reporting person on a long-term basis, in particular during legal proceedings. This fragile situation can not only compromise the reporting person's public-interest action but also, most importantly, his or her health and social life. This justifies making psychological support measures available to reporting persons during the reporting process.

Or. fr

Amendment 27

Proposal for a directive Recital 78

Text proposed by the Commission

Amendment

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

(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.

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.

Or. fr

Amendment 28

Proposal for a directive Recital 82

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 29

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

Amendment

(84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause harm to the public interest through effective

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.

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.

Or. fr

Amendment 30

Proposal for a directive Chapter 1 – title

Text proposed by the Commission

SCOPE AND DEFINITIONS

Amendment

PURPOSE, SCOPE AND DEFINITIONS

Or. fr

Amendment 31

Proposal for a directive Article -1 (new)

Text proposed by the Commission

Amendment

Article -1

Purpose

The purpose of this Directive is to enhance, by vigorously protecting the fundamental rights and freedoms, the enforcement of the law and the EU's

policies and to safeguard the public interest, by laying down common minimum standards for the protection of persons reporting on unlawful activities or abuses of law in the areas specified in Article 1.

Or. fr

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – introductory part

Text proposed by the Commission

1. *With a view to enhancing the enforcement of Union law and policies in specific areas, this* Directive lays down common minimum standards for the protection of *persons reporting on the following unlawful activities or abuse of law*:

Amendment

1. *This* Directive lays down common minimum standards for the protection of *whistleblowers or persons reporting on*:

Or. fr

Amendment 33

Proposal for a directive

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

Text proposed by the Commission

(da) breaches of the fundamental rights and freedoms enshrined in the Charter.

Amendment

Or. fr

Amendment 34

Proposal for a directive

Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 35

**Proposal for a directive
Article 2 – paragraph 1 – point d a (new)**

Text proposed by the Commission

Amendment

(da) Officials and other servants of the European Union, as defined by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68;^{1a}

^{1a} OJ L 56, 4.3.1968, p. 1.

Or. fr

Amendment 36

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

Text proposed by the Commission

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

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, **as well as to reporting persons whose working**

relationship has ceased.

Or. fr

Amendment 37

Proposal for a directive Article 3 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

(1) ‘breaches’ means **wrongdoing**, actual or potential unlawful activities or abuse of law relating to the Union acts, **being as these acts constitute the framework protecting the general interest of the Union**, and areas falling within the scope referred to in Article 1 and in the Annex;

Or. fr

Amendment 38

Proposal for a directive Article 3 – paragraph 1 – point 8

Text proposed by the Commission

8. ‘disclosure’ means making information on breaches acquired within the work-related context available **to** the public domain;

Amendment

(8) ‘**public** disclosure’ means making information on breaches acquired within the work-related context available **in** the public domain;

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. fr

Amendment 39

Proposal for a directive Article 3 – paragraph 1 – point 9

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Text proposed by the Commission

Amendment

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

(Does not affect the English version.)

Or. fr

Justification

(Does not affect the English version.)

Amendment 40

Proposal for a directive

Article 3 – paragraph 1 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) ‘facilitator’ means a natural or legal person who contributes to the reporting process or assists the reporting person in the reporting process.

Or. fr

Amendment 41

Proposal for a directive

Article 3 – paragraph 1 – point 12

Text proposed by the Commission

Amendment

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;

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

Or. fr

Amendment 42

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 43

Proposal for a directive Article 4 – paragraph 6 – point d a (new)

Text proposed by the Commission

Amendment

(da) the EU institutions, bodies, offices and agencies.

Or. fr

Amendment 44

Proposal for a directive Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) a confidential notification of receipt of the report to the reporting person within no more than seven days;

Or. fr

Amendment 45

Proposal for a directive Article 5 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) a reasonable timeframe, not exceeding **one month of notification of** the report, to provide feedback to the reporting person about the follow-up to the report;

Or. fr

Amendment 46

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 47

Proposal for a directive Article 9 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 48

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 **two** months **from the notification of the report**, or **four** months in duly justified cases, for giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back;

Or. fr

Amendment 49

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

1. A reporting person shall qualify for protection under this Directive, provided that:

(a) he or she has reasonable grounds to believe that the information reported was true at the time of reporting;

(b) this information falls within the scope of this Directive;

(c) **he or she has made an internal report, as provided for in Article 5, an external report, as provided for in Article 9, or a public dissemination.**

Or. fr

Amendment 50

Proposal for a directive Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. If the reporting person has complied with the reporting conditions set out in paragraph 1, no reason may be given for refusing him or her the protection provided for in this Directive.

Or. fr

Amendment 51

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

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

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

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

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

(e) he or she had reasonable grounds

to believe that the use of internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;

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

Or. fr

Amendment 52

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 on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported in accordance with paragraph *I*.

Or. fr

Amendment 53

Proposal for a directive Article 13 – paragraph 4

Text proposed by the Commission

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

(a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was

Amendment

deleted

taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or

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

Or. fr

Amendment 54

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

Text proposed by the Commission

Amendment

4a. If the identity of the author of an anonymous report is revealed at a later stage, he or she shall enjoy the protection provided for by this Directive under the same conditions as a reporting person whose identity was public knowledge when the report or public disclosure was first made.

Or. fr

Amendment 55

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 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, in the form of, *among others*:

Amendment 56

Proposal for a directive

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

Text proposed by the Commission

Amendment

(na) any recommendation by the concerned person made to a third party with a view to carrying out a form of retaliation as set out in this Article.

Or. fr

Amendment 57

Proposal for a directive

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Support for the reporting person from an independent third party

1. Member States may provide for the person reporting or intending to make a report or a public disclosure to be given support in the procedure. Such support shall ensure the identity of the persons referred to in this paragraph remains confidential and may, in particular, take the form of:

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

(b) legal advice in the event of a legal dispute;

(c) psychological support;

2. This support may be provided by an

independent administrative authority, an organisation representing workers or an accredited body designated by the Member State, provided that it fulfils the following criteria:

(a) it is properly constituted according to the law of a Member State;

(b) it has a legitimate interest in ensuring compliance with the provisions laid down in this Directive; and

(c) it is a non-profit making entity.

Or. fr

Amendment 58

Proposal for a directive Article 15 – paragraph 5

Text proposed by the Commission

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

Amendment

5. In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or ***public*** disclosure, it ***is to be presumed*** that the detriment was ***suffered in retaliation for the report or public disclosure.***

Or. fr

Amendment 59

Proposal for a directive Article 15 – paragraph 7

Text proposed by the Commission

7. In addition to the exemption from measures, procedures and remedies

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*.

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 *to have the case dismissed*.

Or. fr

Amendment 60

Proposal for a directive Article 15 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Member States shall ensure that the reporting person shall receive, on request, adequate psychological support.

Or. fr

Amendment 61

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Duty to preserve the confidentiality of the identity of the reporting person

1. The reporting person's identity may not be disclosed without his or her express consent. This duty of confidentiality also includes information which may be used to identify the reporting person.

2. A person who possesses or obtains the information referred to in paragraph 1 shall be duty-bound not to disclose it.

3. The circumstances in which, by way of derogation from paragraph 2, information germane to the identity of the reporting person may be disclosed shall be limited to exceptional cases where disclosure of such information is a necessary and proportionate obligation required by Union or national law in the context of subsequent investigations or judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

4. In the cases referred to in paragraph 3, the person designated to receive the report shall inform the reporting person before disclosing his or her identity.

5. The internal and external reporting channels shall be designed in such a way as to ensure the identity of the reporting person remains confidential and to prevent access by non-authorized persons.

Or. fr

Amendment 62

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

Or. fr

Amendment 63

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 64

Proposal for a directive Article 21 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 65

Proposal for a directive Article 21 – paragraph 3

Text proposed by the Commission

3. The Commission shall, by 15 May

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Amendment

3. The Commission shall, by 15 May

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

2025, taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has operated and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further areas or Union acts.

Or. fr

EXPLANATORY STATEMENT

Protection for whistleblowers: an essential tool in defending the public interest

The debate in Europe on how best to protect whistleblowers has moved forward significantly in recent decades. In the light of numerous studies and feedback on experiences, it is now commonly accepted that whistleblowers play a positive role in preventing and remedying acts prejudicial to the public interest. However, the potential benefits of whistleblowing are a long way from being fully exploited since many witnesses of acts prejudicial to the public interest in a professional context do not systematically report them. The reasons for this reticence are multiple and range from lack of knowledge of the reporting options available to fear of reprisals if they speak out. This has damaging consequences for society as a whole, as a wide variety of such attacks on the public interest, whether they concern the environment, the fight against tax evasion or corruption, or public health, continue to occur, thus undermining the public's right to information.

The Member States have often only amended legislation protecting whistleblowers in the wake of major scandals or disasters. Nevertheless, the recommendations adopted by the Council of Europe in 2014 were a significant step forward in establishing a set of standards that we urge Member States to transpose into their national law.

This proposal draws on these standards as well as European Court of Human Rights case law on freedom of expression. The rapporteur warmly welcomes the Commission's decision to incorporate its proposal for a directive into the framework of these recommendations, while paying due account to the resolution adopted by the European Parliament on 24 October 2017.

Scope: ensuring the effectiveness of the proposed instrument

The rapporteur agrees that a broad and cross-cutting scope is the correct choice since the instrument will therefore cover a great many sectors ranging from protecting the Union's financial interests to nuclear safety, environmental protection, public health and the fight against tax evasion. A person shall be considered as a whistleblower if he or she reports or discloses an infringement of a Union act pertaining to one of these sectors, as set out in the Annex to the proposal. However, the risk remains that acts not constituting an infringement within the meaning of the Directive may fall outside its scope. The rapporteur therefore proposes that any wrongdoing pertaining to these sectors should be covered by the Directive. The rapporteur believes that this would be a more effective way of ensuring the public interest is protected, which is at the very heart of this proposal.

Since the European Union is founded on a set of common values and principles that guarantee respect for human rights and fundamental freedoms, the rapporteur considers it necessary to bring these fundamental rights under the scope of the proposal.

Officials and other servants of the European Union may, in the course of their professional activities, be privy to information which could give rise to whistleblowing as defined by this proposal for a Directive and could fall victim to retaliation. It is therefore important that they are granted the same protection as other workers. It is also important to ensure protection for those who assist the reporting person in the process, including investigative journalists.

Reporting channels: acting in the whistleblower's interest

The rapporteur believes that the reporting channels set out in the proposal for a directive present sufficient safeguards as to robustness and independence. They could, however, be improved by providing for a notification of receipt of a report. The processing deadlines proposed by the Commission also appear to be too long, which could be a hindrance to the reporting procedure, and the rapporteur therefore proposes that they be shortened. The rapporteur also believes that trade union representatives should be actively involved in the design of internal channels and the provision of advice and support to those requesting them. Indeed, workers' representatives are directly present in the field and best placed to lend support to potential whistleblowers in the process and to inform them about the internal reporting channels as well as their rights and obligations. It is therefore important for the Directive to afford them this role.

It would also appear essential to ensure that the identity of the reporting person remains confidential. Indeed, people who notice irregularities often end up backsliding and self-censorship mechanisms can kick in as a result of fear that their identity will be revealed. Respect for confidentiality has been shown to increase the number of whistleblower alerts received. The proposal's provisions in this area should therefore be strengthened in this regard to this question by providing for strong confidentiality requirements which may only be waived in exceptional and circumscribed circumstances.

Ensuring effectiveness of whistleblowing and the right to information

The proposal is underpinned by a relatively strict sequencing concerning the use of reporting channels, with a certain amount of derogations. As a rule, a potential whistleblower should therefore first contact his or employer, wait up to three months for the report to be processed, then, in the event of an unsatisfactory response, contact an external authority and before possibly waiting up to another six months. Not only can this seriously compromise the report itself, but above all it also risks forcing whistleblowers into situations of immediate difficulty with their employers. What is more, this approach places the burden of proof on the whistleblowers to show they have chosen the most appropriate channel in the event that the sequencing provided for in the text is not followed. In the context of a balance of power that is anything but equal, this could well put the reporting person at risk. Lastly, this approach does not pay enough attention to the public's right to information in the event of a breach of the public interest. For these reasons, the rapporteur suggests rethinking the multiple tiers of channels by introducing more flexibility in order to leave it up to the reporting person to choose the most appropriate channel to use.

While it is entirely positive that the proposal grants protection to persons who have reasonable grounds to believe that the information reported was true at the time of reporting, the rapporteur believes that further clarification is required on this provision in order to exclude any possibility of reports being refused on grounds related to the whistleblower's intentions. The proposal's main focus should be on the relevance of the information disclosed in respect of the public interest, above and beyond the reasons for making the report.

Ensuring effective and comprehensive protection for whistleblowers

The proposal for a directive prohibits retaliation, and lists the forms that this may take. This list can in no way be considered exhaustive, since the imagination of the perpetrator is the

only factor limiting the form and extent of any retaliation. It should therefore be made clear that these are only examples.

Some of the forms of protection granted are particularly useful. The reversal of the burden of proof is one such measure and the wording adopted by the proposal for a Directive has been made stronger so to enable the full potential of that provision to be brought to bear.

Anonymous reports have been submitted and will continue to be submitted. The rapporteur therefore wishes to include a provision in the text allowing a person whose identity is revealed although he or she wishes to remain anonymous to be covered by the Directive.

There are a variety of mechanisms to accompany and support whistleblowers in the Member States. These enable, for example, confidential advice on whistleblowing mechanisms to be provided by public authorities, trade unions or civil society organisations. The rapporteur considers such systems to be essential to assist whistleblowers in the process and therefore suggests that the directive could provide for them to be put in place in the various Member States, with due account for differing national circumstances. The rapporteur would also like psychological support and legal and financial assistance to be provided for whistleblowers.

Ensuring sufficient legal certainty to guarantee free speech

Certain aspects of this proposal may dissuade persons wishing to report wrongdoing. This is particularly the case with regard to the degree of seriousness: it can be difficult for an individual to assess this and it is a factor that may be used as grounds to call into question the report. Thus, protection must be guaranteed whatever the seriousness of the information revealed, provided that it pertains to acts prejudicial to the public interest.

Similarly, the proposal for a directive includes provision for sanctions to discourage malicious and abusive whistleblowing. This would appear to be redundant since there are already provisions in national law punishing libel or reputational damage. By establishing additional penalties, the proposal risks having the effect of discouraging or deterring reporting, including wholly legitimate acts of whistleblowing. The rapporteur therefore proposes deleting this part of the text.

The rapporteur sees the proposal as a first step but it raises important questions concerning the issue of extending its scope. She is therefore of the opinion that it should be assessed, and, if necessary, revised without delay in order to make it more cross-cutting in nature and more easily understandable for citizens.