



2018/0106(COD)

13.7.2018

DRAFT OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

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

Rapporteur for opinion (*): Miguel Viegas

(*) Associated committee – Rule 54 of the Rules of Procedure

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SHORT JUSTIFICATION

The ECON draftsperson fully welcomes this proposal from the Commission for an EU-wide protection of whistle-blowers, as the Parliament already requested for a long time, among others in its PANA committee report and the previous JURI INI report, to which ECON contributed.

The proposal also builds upon the sectoral whistle-blowers protection measures which ECON introduced in previous legislation, such as the Anti-Money Laundering Directive (AMLD4-5) and the Market Abuse Regulation (MAR).

In his amendments, the ECON draftsperson aims to

- improve the definition (Article 3)
- extend the scope of workers' rights (Article 1)
- ensure material support (Article 15)
- delete Recital 21
- introduce the idea that a whistle-blower cannot replace the operational capacity of state surveillance services
- introduce a clear mechanism to assign a whistle-blower status for legal certainty
- introduce the possibility of anonymity
- facilitate the use of external channels without going through the internal channels

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 2

Proposal for a directive Recital 27

Text proposed by the Commission

(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, are typically subject to retaliation in the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.

Amendment

(27) Protection should also extend to ***people facilitating the reporting, such as intermediaries and investigative journalists, who disclose potential or actual breaches, 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, freelancers, contractors, sub-contractors and suppliers, are typically subject to retaliation in the form of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or

blacklisting/business boycotting.

Or. en

Amendment 3

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.

Or. en

Amendment 4

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***

Amendment

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persons who are not in an employment relationship), or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no action was taken to address the breach of law despite the positive results of the enquiry).

Or. en

Amendment 5

Proposal for a directive Recital 63

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 6

Proposal for a directive

Article 1 – paragraph 1 – point a – point ii

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 7

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ixa) workers' protection and breach of labour law

Or. en

Amendment 8

Proposal for a directive

Article 2 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

a) persons having the status of worker, with the meaning of Article 45 TFEU, ***as well as persons having the status of civil servants***;

Amendment 9

Proposal for a directive

Article 2 – paragraph 1 – point da (new)

Text proposed by the Commission

Amendment

da) persons facilitating the reporting, such as intermediaries or journalists.

Or. en

Amendment 10

Proposal for a directive

Article 3 – paragraph 1 – point 9

Text proposed by the Commission

Amendment

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

(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 *and who is at risk of retribution; that includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees, interns, volunteers, student workers, temporary workers and former employees;*

Or. en

Amendment 11

Proposal for a directive

Article 3 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(10) ‘work-related context’ means *current or past work activities in the*

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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.

Or. en

Amendment 12

Proposal for a directive Article 4 – paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. Such channels shall safeguard the anonymity of the whistleblower when the whistleblower so wishes, as well as their personal data.

Or. en

Amendment 13

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

Text proposed by the Commission

Amendment

ca) ensure that such reporting channels safeguard the anonymity of the whistleblower when the whistleblower so wishes, as well as their personal data;

Or. en

Amendment 14

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 15

Proposal for a directive

Article 7 – paragraph 1 – point ca (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 16

Proposal for a directive

Article 7 – paragraph 2 – second subparagraph (new)

Text proposed by the Commission

Amendment

Such channels shall safeguard the anonymity of the whistleblower when the whistleblower so wishes, as well as their personal data;

Or. en

Amendment 17

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. A reporting person shall qualify for

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.

protection ***and be granted the status of a reporting person*** under this Directive provided he or she has reasonable grounds to believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive. ***Protection extends to those who make inaccurate disclosures in honest error and protection to reporting persons should be in effect while the accuracy of a disclosure is being assessed.***

Or. en

Amendment 18

Proposal for a directive

Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall establish clear criteria for granting the rights and protection provided for in this Directive to reporting persons from the moment of reporting.

Or. en

Amendment 19

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 :

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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. en

Amendment 20

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.

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 may provide for further measures of legal and financial assistance and support for reporting persons in the framework of legal proceedings, *as well as financial support in cases of temporary loss of*

income.

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).

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).

Or. en

Amendment 21

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.

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Or. en

Amendment 22

Proposal for a directive Annex I – part I a (new)

Text proposed by the Commission

Amendment

Ia This Directive applies to all Union acts.

Or. en