



TEXTS ADOPTED

P8_TA(2017)0022

The role of whistleblowers in the protection of EU's financial interests

European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI))

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 thereof,
- having regard to Articles 22a, 22b and 22c of the Staff Regulations of Officials of the European Union,
- having regard to its resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken¹,
- having regard to the Decision of the European Ombudsman closing her own-initiative inquiry OI/1/2014/PMC concerning whistleblowing,
- having regard to Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure²,
- having regard to Article 9 of the Council of Europe Civil Law Convention on Corruption,
- having regard to Article 22(a) of the Council of Europe Criminal Law Convention on Corruption,
- having regard to Council of Europe recommendation CM/Rec(2014)7 on the protection of whistleblowers,
- having regard to Articles 8, 13 and 33 of the United Nations Convention Against Corruption,
- having regard to Principle 4 of the OECD Recommendation on Improving Ethical

¹ OJ C 208, 10.6.2016, p. 89.

² OJ L 157, 15.6.2016, p. 1.

Conduct in the Public Service,

- having regard to the inquiry of the office of the European Ombudsman of 2 March 2015 and to its call for the EU institutions to adopt the required rules on whistleblowing,
 - having regard to the OECD publication on ‘Committing to effective whistleblower protection’,
 - having regard to the decision of the European Court of Human Rights in the case *Guja v. Moldova*, Application No 14277/04 of 12 February 2008,
 - having regard to Article 6 of the Charter of Fundamental Rights of the European Union,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Constitutional Affairs (A8-0004/2017),
- A. whereas in the context of the discharge procedure, Parliament needs as much information as possible relating to any such irregularities; whereas in cases concerning irregularities internal to the institutions, Parliament should be entitled to full access to information so that it can conduct the discharge procedure in full knowledge of the facts;
- B. whereas the European Court of Auditors provides Parliament with an excellent basis for its examinations, but cannot itself cover all individual expenditures;
- C. whereas the Commission and other EU institutions similarly provide Parliament with informative reports on their spending, but also rely on official reporting mechanisms;
- D. whereas the Union’s many funds are subject to shared management by the Commission and the Member States, which makes it difficult for the Commission to report on irregularities concerning individual projects;
- E. whereas Parliament regularly receives information from individual citizens or non-governmental organisations in respect of irregularities concerning individual projects funded entirely or in part from the Union budget;
- F. whereas whistleblowers therefore play an important role in preventing, detecting and reporting irregularities in respect of the expenditures relating to the EU budget, as well as in identifying and publicising cases of corruption; whereas a culture of trust fostering the European public good needs to be established and promoted in which EU officials and other staff, as well as the general public, feel safeguarded by sound management practices, and which shows that the EU institutions support, protect and encourage potential whistleblowers;
- G. whereas it is vital for a horizontal legal framework to be established as a matter of urgency, which, by laying down rights and obligations, protects whistleblowers throughout the EU, as well as in the EU institutions (the protection of anonymity, provision of legal, psychological and, where necessary, financial assistance, access to various information channels, rapid response schemes, etc.);

- H. whereas most EU Member States have ratified the UN Convention against Corruption, which makes it obligatory to provide appropriate and effective protection to whistleblowers;
- I. whereas whistleblowing is an essential source of information in the fight against organised crime and in the investigation of corruption in the public sector;
- J. whereas whistleblowers play a particularly important role when it comes to the detection and reporting of corruption and fraud, as the parties directly involved in these criminal practices will actively try to conceal them from any official reporting mechanisms;
- K. whereas whistleblowing, based on the principles of transparency and integrity, is essential; the protection of whistleblowers should therefore be guaranteed by law and reinforced throughout the EU, but only if the purpose of their action is to protect the public interest by acting in good faith in accordance with the jurisprudence of the European Court of Human Rights;
- L. whereas the authorities should not limit or reduce the ability of whistleblowers and journalists to document and disclose illegal, unlawful or harmful practices, when revealing this information in good faith and the public interest is a priority;
- M. whereas all the EU institutions have been obliged since 1 January 2014 to introduce internal rules protecting whistleblowers who are officials of the EU institutions, in accordance with Articles 22a, 22b and 22c of the Staff Regulations, and the working group of the interinstitutional Preparatory Committee for Matters relating to the Staff Regulations, dealing with the protection of whistleblowers, has not yet finished its work; whereas part of the work done by that working group should be to assess the situation of whistleblowers who have suffered negative consequences in the institutions, so as to establish best practices based on past experience; whereas those internal rules must take account of the management structure and of the specific characteristics of the various categories under the Staff Regulations;
- N. whereas protection of whistleblowers at Member State level has neither been implemented in all Member States, nor harmonised, which means that even when the financial interests of the European Union are at stake, it may be personally and professionally risky for whistleblowers to provide Parliament with information on irregularities; whereas it is precisely because people are afraid of what might happen to them owing to the lack of protection, and because they believe that no action will be taken, that irregularities are not reported, and the EU's financial interests are undermined as a result;
- O. whereas there is a need to ensure that any kind of retaliation against whistleblowers will be suitably punished;
- P. whereas in its resolution of 23 October 2013, Parliament called on the Commission to submit a legislative proposal by the end of 2013 establishing an effective and comprehensive European whistleblower protection programme in the public and private sectors, to protect those who detect inefficient management and irregularities and report cases of national and cross-border corruption relating to the EU's financial interests; whereas, in addition, it called on the Member States to put in place appropriate and

effective protection for whistleblowers;

- Q. whereas, the EU legislator has already provided for the protection of whistleblowers in sectorial instruments including Directive 2013/30/EU on safety of offshore oil and gas operations, Regulation (EU) No 596/2014 on market abuse, Directive (EU) 2015/849 on money laundering and terrorist financing and Regulation (EU) No 376/2014 on occurrence reporting;
 - R. whereas the protection of whistleblowers in the Union has become even more urgent, as the Trade Secrets Directive limits the rights of whistleblowers and may thus have an unintended discouraging effect on those who want to report irregularities in the context of Union funding from which individual companies have benefitted;
 - S. whereas important work has already been undertaken by international organisations such as the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe, who have developed recommendations in regard to the protection of whistleblowers;
 - T. whereas according to the OECD more than one third of organisations with a reporting mechanism did not have, or did not know of, a written policy on protecting those who report from reprisals;
 - U. whereas non-governmental organisations such as Transparency International, Whistleblowing International Network, etc., have similarly developed international principles for whistleblower legislation which should serve as a source of inspiration for EU initiatives in this regard;
 - V. whereas the office of the European Ombudsman has a clear competence in relation to the investigation of complaints of EU citizens about maladministration in the EU institutions, but in itself plays no role in the protection of whistleblowers in the Member States;
 - W. whereas the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union introduced in its most recent version, in force since 1 January 2014, several provisions on whistleblowing;
 - X. whereas the protection of whistleblowers is essential for safeguarding the public good and the financial interests of the Union and for promoting a culture of public accountability and integrity in both public and private institutions;
 - Y. whereas in many jurisdictions, and particularly in the private sector, employees are subject to duties of confidentiality with respect to certain information, which means that whistleblowers might encounter disciplinary actions for reporting outside their organisation;
1. Deplores the fact that the Commission has so far failed to submit any legislative proposals aimed at establishing a minimum level of protection for European whistleblowers;
 2. Urges the Commission to immediately submit a legislative proposal establishing an effective and comprehensive European whistleblower protection programme which includes mechanisms for companies, public bodies and non-profit organisations and, in

particular, calls on the Commission to submit a legislative proposal before the end of this year protecting whistleblowers as part of the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union, with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies;

3. Maintains that whistleblowers play an essential role in helping Member State and EU institutions and bodies prevent and tackle any breaches of the principle of integrity and misuse of power that threaten or violate public health and safety, financial integrity, the economy, human rights, the environment or the rule of law at European and national levels, or that raise unemployment, restrict or distort fair competition and undermine the trust of citizens in democratic institutions and processes; stresses that, in this regard, whistleblowers contribute greatly to increasing the democratic quality of, and the trust in, public institutions by making them directly accountable to citizens and more transparent;
4. Notes that both the whistleblowers and the public body or institution involved should ensure the legal protection of rights guaranteed by the EU Charter of Fundamental Rights and by national legal provisions;
5. Recalls that the Member States, as first consignees of EU funds, have an obligation to scrutinise the legality of how they are spent;
6. Notes that only a few Member States have introduced sufficiently advanced whistleblower protection systems; calls on those Member States which have not yet adopted the principles to protect whistleblowers in their domestic law, to do so as soon as possible;
7. Calls on the Member States to enforce effective anti-corruption rules and, at the same time, to properly implement European and international standards and guidelines concerning the protection of whistleblowers in their national laws;
8. Regrets that many Member States have yet to put in place dedicated whistleblower protection rules, notwithstanding the essential need of whistleblower protection in the prevention of, and fight against, corruption, and despite the fact that whistleblower protection is recommended in Article 33 of the UN Convention against Corruption;
9. Emphasises that whistleblowing relating to the financial interests of the Union is the disclosure or reporting of wrongdoing, including, but not limited to, corruption, fraud, conflicts of interest, tax evasion and tax avoidance, money laundering, infiltration by organised crime and acts to cover up any of these;
10. Considers it necessary to foster an ethical culture helping to ensure that whistleblowers will not suffer retaliation or face internal conflicts;
11. Reiterates the fact that a whistleblower is required to inform about irregularities affecting the financial interests of the EU as well as the fact that whistleblowers should always cooperate by sharing information with the competent EU authorities;
12. Reiterates the fact that whistleblowers often have better access to sensitive information than outsiders, and thus may be more likely to experience negative consequences in their professional career or risk their personal safety, which is protected under Article 6

of the Charter of Fundamental Rights of the EU;

13. Stresses that the definition of whistleblowing includes the protection of those who disclose information with a reasonable belief that the information is true at the time it is disclosed, including those who make inaccurate disclosures in honest error;
14. Stresses the role of investigative journalism and calls on the Commission to ensure that its proposal affords the same protection to investigative journalists as it does to whistleblowers;
15. Expresses the need to establish an independent information-gathering, advisory and referral EU body, with offices in Member States which are in a position to receive reports of irregularities, with sufficient budgetary resources, adequate competences and appropriate specialists, in order to help internal and external whistleblowers in using the right channels to disclose their information on possible irregularities affecting the financial interests of the Union, while protecting their confidentiality and offering needed support and advice; in the first phase, its work would be primarily based on reliable verification of the information received;
16. Calls for the EU institutions, in cooperation with all relevant national authorities, to introduce and take all necessary measures to protect the confidentiality of the information sources in order to prevent any discriminatory actions or threats;
17. Welcomes the decision taken by the European Ombudsman in 2014 to launch an own-initiative investigation, addressing the EU institutions, into the protection of whistleblowers, and welcomes the extremely positive outcomes that has had; calls for the institutions and other bodies of the EU that have yet to do so to apply, without delay, the guidelines that were drawn up upon conclusion of the investigation;
18. Calls for the EU institutions to raise awareness of the serious concerns of defenceless whistleblowers; urges the Commission therefore to provide a comprehensive action plan on this issue;
19. Requests the establishment a special unit with a reporting line as well as dedicated facilities (e.g. hotlines, websites, contact points) within Parliament for receiving information from whistleblowers relating to the financial interests of the Union, which will also provide them with advice and help in protecting them against any possible retaliatory measures, until such time as an independent EU institution has been established as referred to in paragraph 4;
20. Calls for a website to be launched where complaints can be submitted; stresses that the website should be accessible to the public and should keep their data anonymous;
21. Calls for the Commission to provide a clear legal framework that guarantees that those exposing illegal or unethical activities are protected from retaliation or prosecution;
22. Calls for the Commission to present concrete proposals for full protection of those who expose illegalities and irregularities, and to provide a comprehensive plan to discourage asset transfers to countries outside the EU that serve as protectors of anonymity to corrupt persons;
23. Expresses the need to ensure that reporting mechanisms are accessible, safe and secure,

and that whistleblowers' claims are professionally investigated;

24. Calls on the Commission, and on the European Public Prosecutor's Office in so far as it is within its mandate upon its establishment, to establish efficient channels of communication between the parties concerned, to likewise set up procedures for receiving and protecting whistleblowers who provide information on irregularities relating to the financial interests of the Union, and to establish a single working protocol for whistleblowers;
25. Calls on all EU institutions and bodies to take the necessary action to ensure recognition and consideration of, and respect for, whistleblowers in all cases that affect or have affected them and that have been acknowledged as such by the Court of Justice of the European Union, and points out that this should apply retroactively; calls on them, furthermore, to publicly and substantively report on the rulings concerned to the institution as a whole;
26. Calls on the Commission and on the Member States to provide Parliament with any information received from whistleblowers affecting the financial interests of the Union and to include a chapter on their alerts and the follow-up to these in the annual activity reports; calls for action at EP level to establish the accuracy of information in order to take appropriate measures;
27. Calls on the Commission to carry out a public consultation to seek the view of stakeholders on the reporting mechanisms and on the potential shortcomings of the procedures at national level; the results of the public consultation will represent a valuable input for the Commission when preparing its future proposal on whistleblowing;
28. Invites the independent EU body, and until established, the European Anti-Fraud Office (OLAF) to write and publish an annual report on the evaluation of the protection of whistleblowers in the European Union;
29. Further invites the Court of Auditors to include in its annual reports a specific section on the role of whistleblowers in protecting the financial interests of the Union;
30. Invites the EU agencies to provide a written policy on protecting those who report from reprisals;
31. Welcomes the fact that Parliament, the Commission, the Council of the European Union, the Court of Justice of the European Union, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, and the European Data Protection Supervisor implemented internal rules protecting whistleblowers, in accordance with Articles 22a, 22b and 22c of the Staff Regulations; urges all institutions to ensure their respective adopted internal rules on whistleblower protection are robust and comprehensive;
32. Encourages the Member States to develop data, benchmarks and indicators on whistleblower policies in both the public and private sector;
33. Recalls that Commission Implementing Directive (EU) 2015/2392 sets out the procedures for reporting, record-keeping requirements, and protection measures for

whistleblowers; underlines the importance of guaranteeing that whistleblowers can report infringements in a confidential way and that their anonymity is properly and fully safeguarded, also in the digital environment, but regrets that this is one of the few pieces of sectorial legislation that includes provisions for whistleblowers;

34. Encourages the Commission to study best practices from whistleblower programmes already in place in other countries around the world; draws attention to the fact that some existing schemes provide financial rewards to whistleblowers (such as a percentage of the sanctions ordered); considers that although this needs to be managed carefully to prevent potential abuse, such rewards could provide important income to persons who have lost their jobs as a result of whistleblowing;
35. Calls on the Member States to refrain from criminalising the actions of whistleblowers in disclosing information about illegal activities or irregularities harmful to the EU's financial interests;
36. Instructs its President to forward this resolution to the Council and the Commission.