

Protection of persons reporting on breaches of Union law

Proposal for a directive COM(2018)0218 - C8-0159/2018 – 2018/0106(COD)

MALICIOUS REPORTING

Amendment xx

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.

2. Deleted

Justification

Though individuals who make reports or disclosures demonstrated to be knowingly false can be subject to sanctions, Member States already have existing national measures addressing malicious reporting, through defamation or libel laws

REPORTING CHANNEL OBLIGATIONS

Amendment xx

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:

2. 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.*

Amendment xx

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 the conditions set out in paragraph ***1***.

Amendment xx

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

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

CONFIDENTIALITY

Amendment xx

Proposal for a directive Article 15 (new)

Text proposed by the Commission

Amendment

Article 14

Duty of maintaining the confidentiality of the identity of reporting persons

- 1. The identity of a reporting person may not be disclosed without the individual's explicit consent. This includes information that may be used to discover the identity of the reporting person.***
- 2. Any person who learns about the data referred to in paragraph 1 of this Article shall be required to protect such data.***
- 3. Circumstances under which the confidential data of a reporting person may be disclosed are limited to cases where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of***

defence of the concerned person, and in each case subject to appropriate safeguards under such laws.

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

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

Amendment xx

Proposal for a directive

Article 9 – paragraph 1 – point c

Text proposed by the Commission

Amendment

c. the confidentiality regime applicable to reports, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed.

Deleted

Amendment xx

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case

Deleted

subject to appropriate safeguards under such laws.

ANONYMOUS REPORTING

Amendment xx

Proposal for a directive Article 13 – paragraph 5 (new)

Text proposed by the Commission

Amendment

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

Amendment xx

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

Text proposed by the Commission

Amendment

c) diligent follow up to the report by the designated person or department;

c) diligent follow up to the report by the designated person or department. ***The mere fact that a report has been made anonymously should not be grounds for failure to follow-up on the report.***

Amendment xx

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.

3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations. ***The mere fact that a report has been made anonymously***

should not be grounds for failure to take the necessary measures to investigate the substance of the report.

NATIONAL WHISTLEBLOWING AUTHORITIES

Amendment xx

Proposal for a directive

Article 14 (new)

Text proposed by the Commission

Amendment

Article 14

National Whistleblowing Authorities

1) Member States shall designate one or several authorities responsible for the oversight and enforcement of the protection of persons reporting on breaches of Union law.

2) Member State shall ensure that the entity or entities mentioned in paragraph 1 are independent and have sufficient power and resources to operate effectively.

3) The entity or entities shall:

a. Receive and diligently follow up on complaints of retaliation from reporting persons;

b. Receive and diligently follow up on complaints of inappropriate follow-up of reports and disclosures;

c. Provide advice and support to reporting persons and persons designated to receive reports;

d. Publish procedural guidelines regarding the procedures for internal and external reporting and follow-up of reports as it considers appropriate;

e. monitor and review external reporting procedures;

f. Collect and publish data and information regarding the protection of persons reporting on breaches of Union law, including statistics mentioned in

article 21(2);

g. Conduct public awareness programmes aimed at informing workers and the general public about the making of reports and disclosures.

INDEPENDENT SUPPORT

Amendment xx

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

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

PENALTIES

Amendment xx

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:

- a) hinder or attempt to hinder reporting;
- b) take retaliatory measures against reporting persons;
- c) bring vexatious proceedings against reporting persons;

Amendment

1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:

- a) hinder or attempt to hinder reporting;
- b) take retaliatory measures against reporting persons;
- c) bring vexatious proceedings against reporting persons;

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

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

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

f) do not fulfil their obligation to provide feedback to the reporting person about the follow up to the report.

REMEDIES

Amendment xx

Proposal for a directive Article 15 – paragraph 6

Text proposed by the Commission

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

Amendment

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

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

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

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

d) compensation for lost past, present, or future earnings and status;

e) compensation for pain and suffering;

f) interim relief pending the resolution of legal proceedings.

BURDEN OF PROOF

Amendment xx

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 proceedings relating to a detriment suffered by the reporting person, and subject to him or her **establishing that he or she made a report or disclosure and suffered a detriment** it shall be **presumed that the detriment was made in retaliation for having made the report or disclosure**.

SCOPE

Amendment xx

Proposal for a directive Article 2 – paragraph 1 a

Text proposed by the Commission

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:

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

Amendment

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:

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

Amendment xx

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

Text proposed by the Commission

Amendment

2 a. This Directive shall also apply to European Union staff members, as defined within the EU Staff Regulation;

Justification

European Union staff members should be equally protected under the scope of the Directive, and the EU institutions, agencies, and bodies must have the same obligations for public

sector entities set forth in the Directive.

Amendment xx
Proposal for a directive
Article 2 – paragraph 3 (new)

Text proposed by the Commission

Amendment

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

Amendment xx

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

Text proposed by the Commission

Amendment

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

Amendment xx

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

Text proposed by the Commission

Amendment

6a. European Union institutions, agencies and bodies;

Justification

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

Amendment xx

Proposal for a directive
Annex II – paragraph D – point (i) (new)

Text proposed by the Commission

Amendment

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

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

THRESHOLDS FOR PUBLIC SECTOR OBLIGATIONS

Amendment xx

**Proposal for a directive
Article 4 – paragraph 6 – point c**

Text proposed by the Commission

Amendment

6. municipalities ***with more than 10 000 inhabitants;***

6. municipalities;

PROTECTION OF REPORTING PERSONS BY LEGAL ENTITIES

Amendment xx

**Proposal for a directive
Article 4 – paragraph 1**

Text proposed by the Commission

Amendment

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

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

ACKNOWLEDGEMENT OF RECEIPT

Amendment xx

Proposal for a directive

Article 5 – paragraph 1 – point f (new)

Text proposed by the Commission

Amendment

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

DATA COLLECTION

Amendment xx

Proposal for a directive

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the reports referred to in Chapter III to the Commission, ***if they are available at a central level in the Member State concerned:***

- a) the number of reports received by the competent authorities;
- b) the number of investigations and proceedings initiated as a result of such reports and their final outcome;
- c) the estimated financial damage, if ascertained and the amounts recovered following investigations and proceedings related to the breaches reported.

2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the reports referred to in Chapters ***II and III*** to the Commission:

- a) the number of reports received by the competent authorities;
- b) the number of investigations and proceedings initiated as a result of such reports and their final outcome;
- c) the estimated financial damage, if ascertained and the amounts recovered following investigations and proceedings related to the breaches reported.

