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## REPORT

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI))

Committee on Legal Affairs

Rapporteur: Virginie Rozière

Rapporteur for the opinion (\*):  
Molly Scott Cato, Committee on Economic and Monetary Affairs

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

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI))**

*The European Parliament,*

- having regard to the Treaty on European Union, in particular Article 2 thereof,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof,
- having regard to the European Convention on Human Rights (ECHR), in particular Article 10 thereof,
- 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 disclosure,
- having regard to Directive (EU) 2013/30 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,
- having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC,
- having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC,
- having regard to its resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect<sup>1</sup>,
- having regard to its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (TAXE 2)<sup>2</sup>,
- having regard to its resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken<sup>3</sup>,
- having regard to Resolution 1729 (2010) of the Parliamentary Assembly of the Council of Europe on the protection of ‘whistle-blowers’,

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<sup>1</sup> Texts adopted of that date, P8\_TA(2015)0408.

<sup>2</sup> Texts adopted of that date, P8\_TA(2016)0310.

<sup>3</sup> OJ C 208, 10.6.2016, p. 89.

- having regard to Resolution 2060 (2015) of the Parliamentary Assembly of the Council of Europe on improving the protection of whistle-blowers,
- having regard to its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union<sup>1</sup>,
- having regard to the Commission communication of 6 June 2011 on fighting corruption in the EU (COM(2011)0308),
- having regard to the Commission communication of 5 July 2016 on further measures to enhance transparency and the fight against tax evasion and avoidance (COM(2016)0451),
- having regard to the G20 Anti-Corruption Action Plan, in particular its guiding principles for legislation on the protection of whistle-blowers,
- having regard to the OECD report of March 2016 entitled ‘Committing to Effective Whistleblower Protection’,
- having regard to the Decision of the European Ombudsman closing her own-initiative inquiry OI/1/2014/PMC concerning whistle-blowing,
- having regard to the Recommendation CM/Rec(2014)7 of 30 April 2014 of the Committee of Ministers of the Council of Europe on the protection of whistle-blowers, as well to its relevant brief guide for implementing a national framework of January 2015,
- having regard to Resolution 2171 (2017) of the Parliamentary Assembly of the Council of Europe of 27 June 2017 calling on the national parliaments to recognise the ‘right to blow the whistle’,
- having regard to Principle 4 of the OECD Recommendation on Improving Ethical Conduct in the Public Service,
- having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,
- having regard to its resolution of 14 February 2017 on the role of whistle-blowers in the protection of EU’s financial interests (2016/2055(INI))<sup>2</sup>,
- having regard to Rule 52 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Budgetary Control, 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 (A8-0295/2017),

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<sup>1</sup> Texts adopted of that date, P8\_TA(2015)0457.

<sup>2</sup> Texts adopted of that date, P8\_TA(2017)0022.

- A. whereas the EU set itself the objective of upholding democracy and the rule of law and thus guarantees its citizens freedom of expression; whereas whistle-blowing is a fundamental aspect of the freedom of expression and information, as enshrined in the Charter of Fundamental Rights of the European Union, compliance with and application of which are guaranteed by the EU; whereas the EU promotes workers' protection and the improvement of working conditions;
- B. whereas the European Union is helping to consolidate international cooperation in the fight against corruption, in full compliance with the principles of international law, human rights and the rule of law, as well as the sovereignty of each country;
- C. whereas under Article 67(2) of the Treaty on the Functioning of the European Union (TFEU) the European Union is competent to deal with matters relating to the European common asylum policy;
- D. whereas transparency and citizen participation are among the developments and challenges to be addressed by democracies in the 21st century;
- E. whereas, since the economic and financial crisis and the debt crisis, we have seen a wave of action against international tax avoidance and evasion; whereas more transparency in the financial services sphere is needed in order to discourage malpractice, and some Member States have already experience with central repositories for reporting actual or possible breaches of financial prudential rules; whereas the United Nations adopted its Convention against Corruption in 2003<sup>1</sup>; whereas Parliament established two special committees and one committee of inquiry following these revelations; whereas it has already called for protection of whistle-blowers in several resolutions<sup>2</sup>; whereas the initiatives already agreed upon to strengthen international information exchange in tax matters have been helpful, and whereas the various tax-related leaks have revealed large amounts of important information on malpractices that would otherwise not have surfaced;
- F. whereas whistle-blowers play an important role in reporting unlawful or improper conduct which undermines the public interest and the functioning of our societies, and, in order to do so, they expose to their employer, public authorities or directly to the public, information on such conduct which undermines the public interest;
- G. whereas, in so doing, they help Member States, the major EU institutions and other EU bodies to prevent and tackle, in particular, any breach of the principle of integrity or any misuse of power that threatens or violates public health and safety, financial integrity, the economy, human rights, the environment or the rule of law, or which increases unemployment, limits or distorts fair competition or undermines citizens' trust in democratic institutions and processes at national and EU levels;
- H. whereas corruption is a serious problem facing the European Union today, as it can result in the failure of governments to protect the population, workers, the rule of law and the

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<sup>1</sup> [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50027\\_F.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50027_F.pdf)

<sup>2</sup> See, for example, its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (Texts adopted, P8\_TA(2016)0310) and its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union (Texts adopted, P8\_TA(2015)0457).

economy, in a deterioration of public institutions and services, economic growth and competitiveness in various fields, and in a loss of trust in the transparency and democratic accountability of public and private institutions and industries; whereas corruption is estimated to cost the EU economy EUR 120 billion annually or 1% of EU GDP;

- I. whereas, while global anti-corruption efforts have thus far been focused predominantly on public sector wrongdoings, recent leaks have highlighted the role of financial institutions, advisers and other private companies in facilitating corruption;
- J. whereas a number of publicised whistle-blowing cases have shown that whistle-blowing brings information of public interest, such as unlawful or improper conduct or other serious wrongdoing in the private and public sectors, to the attention of the public and of political authorities; whereas some of these acts have therefore been subject to corrective measures;
- K. whereas the safeguarding of confidentiality contributes to the creation of more effective channels for reporting fraud, corruption or other infringements, and whereas, given the sensitivity of the information, mismanagement of confidentiality may lead to the unauthorised dissemination of information and a violation of the public interest of the Union and the Member States;
- L. whereas the introduction of public beneficial ownership registries for company trusts, and similar legal arrangements and other transparency measures for investment vehicles, may act as a counter-deterrent against the wrongdoings that whistle-blowers typically address;
- M. whereas safeguarding the confidentiality of whistle-blowers' identities and of the information they disclose contributes to the creation of more effective channels for reporting fraud, corruption, wrongdoing, misconduct and other serious infringements, and whereas, given the sensitivity of the information, mismanagement of confidentiality may lead to undesired information leaks and a violation of the public interest within the Union; whereas, in the public sector, protecting whistle-blowers can make it easier to detect the misuse of public funds, fraud and other forms of cross-border corruption linked to national or EU interests;
- N. whereas it is regrettable that the existing channels for making formal complaints about misconduct by multinational companies rarely result in any concrete punishments for wrongdoings;
- O. whereas whistle-blowing has proved useful in a number of areas, in both the public and private sectors, such as public health, taxation, the environment, consumer protection, combating corruption and discrimination and upholding social rights;
- P. whereas such cases must be clearly defined, in the light of the duties performed by whistle-blowers, the seriousness of the facts reported or the nature of the dangers revealed;
- Q. whereas it is essential that the line between whistle-blowing and informing should not be crossed; whereas it is not a matter of knowing everything about everyone, but rather of identifying instances of a failure to address threats to democracy;

- R. whereas, in a number of cases, whistle-blowers are subject to retaliatory action, intimidation and pressure with the intention of preventing or deterring them from whistle-blowing or punishing them for having done so, and whereas such pressure is particularly often exercised in the workplace where whistle-blowers who have discovered information in the public interest in the context their working relationship may find themselves in a weaker position vis-à-vis employers;
- S. whereas serious concerns have often been raised that whistle-blowers acting in the public interest can face hostility, harassment, intimidation and exclusion at their place of work, impediments to future employment, loss of livelihood and often also serious threats to their family members and colleagues; whereas fears of retaliation can have a deterrent effect on whistle-blowers, thereby endangering the public interest;
- T. whereas the protection of whistle-blowers should be guaranteed by law and reinforced throughout the EU, in both the public and private sectors, provided they are acting on reasonable grounds; whereas such protection mechanisms should be balanced and guarantee full respect of the fundamental and legal rights of the persons against whom the reports are made; whereas such protection mechanisms should apply to investigative journalists, who remain vulnerable in the context of the disclosure of sensitive information and protect whistle-blowers in the name of the confidentiality of their sources;
- U. whereas the protection of whistle-blowers is not adequately guaranteed in a number of Member States, while many others have introduced advanced programmes to protect them, often, however, lacking in consistency and therefore offering an insufficient degree of protection; whereas the result of that is fragmented protection of whistle-blowers in Europe, which makes it difficult for them to find out their rights, and how to whistle-blow, and creates legal insecurity especially in cross-border scenarios;
- V. whereas in some Member States there is a generalised lack of resolve with regard to adopting and implementing legislation to protect the rights of whistle-blowers, even though there is an obligation to identify and punish corruption, fraud and other offences;
- W. whereas the office of the European Ombudsman has a clear competence in relation to the investigation of EU citizens' complaints about maladministration in the EU institutions, but in itself plays no role in the protection of whistle-blowers;
- X. whereas whistle-blowing is very often not restricted to economic and financial matters; whereas the lack of adequate protection could dissuade potential whistle-blowers from reporting misconduct in order to avoid the risk of reprisal and/or retaliation; whereas the OECD has reported that in 2015, 86% of companies had a mechanism to report suspected instances of serious corporate misconduct, but over one-third of them did not have a written policy on protecting whistle-blowers from reprisals, or did not know if such a policy existed; whereas several whistle-blowers exposing economic and financial wrongdoings, misconducts or illegal activities have been subject to prosecution; whereas persons who report or disclose information in the public interest often suffer reprisals, as do family members and colleagues, resulting, for example, in the loss of their careers; whereas the European Court of Human Rights has a well-established case law regarding whistle-blowers, but the protection of whistle-blowers should be guaranteed by law; whereas the Charter of Fundamental Rights of the European Union ensures the freedom of expression and the right to good administration;

- Y. whereas the protection of whistle-blowers in the European Union should not be limited to European cases alone, but should also apply to international cases;
- Z. whereas workplaces need to cultivate a working environment within which people feel confident in raising concerns about potential wrongdoings such as failings, misconduct, mismanagement, fraud or illegal actions; whereas it is extremely important to foster the right culture that allows people to feel able to raise issues without fear of reprisals that might affect their current and future employment situation;
- AA. whereas in many jurisdictions, and particularly in the private sector, employees are subject to duties of confidentiality with respect to certain information, with the possible consequence that whistle-blowers might encounter disciplinary action for reporting outside of their working relationship;
- AB. whereas, according to an OECD study, more than one third of organisations with a reporting mechanism do not have or do not know of a written policy on protecting whistle-blowers from reprisals;
- AC. whereas EU law already provides for certain rules protecting whistle-blowers from certain forms of retaliation in different areas, the Commission has not yet proposed adequate legislative measures for the effective and uniform protection of whistle-blowers and their rights in the EU;
- AD. whereas all EU institutions have been obliged since 1 January 2014 to introduce internal rules protecting whistle-blowers who are officials of EU institutions, in accordance with Articles 22a, 22b and 22c of the Staff Regulations;
- AE. whereas Parliament has repeatedly called for the horizontal protection of whistle-blowers in the EU;
- AF. whereas, in its resolutions of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken; of 25 November 2015 on tax rulings and other measures similar in nature or effect; of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies; and of 14 February 2017 on the role of whistle-blowers in the protection of the EU's financial interests, Parliament called on the Commission to submit a legislative proposal establishing an effective and comprehensive European whistle-blower protection programme protecting those who report suspected fraud or illegal activity affecting the public interest or the financial interests of the European Union;
- AG. whereas any third-country national recognised as a whistle-blower by the European Union or one of its Member States must be entitled to all the relevant protection measures if, whether in the course of his or her duties or otherwise, he or she has come into the possession of and disclosed information about illegal conduct or acts of espionage, committed either by a third country or by a domestic or multinational company, which are prejudicial to a State, a nation or Union citizens and jeopardise, without their knowledge, the integrity of a government, national security or collective or individual freedoms;



- AH. whereas since 1 July 2014 almost all European institutions and agencies have, as is mandatory, incorporated measures to protect whistle-blowers into their internal rules of procedure, in accordance with Articles 22(b) and (c) of the Staff Regulations;
- AI. whereas international organisations such as the Council of Europe and the OECD have already laid down principles which are now well established and the case-law of the European Court of Human Rights is consistent on that matter;
- AJ. whereas the importance of the protection of whistle-blowers has been recognised by all major international instruments concerning corruption, and whistle-blowing standards have been set out by the United Nations Convention against Corruption (UNCAC), Council of Europe Recommendation CM/Rec(2014)7 and the 2009 OECD Anti-Bribery Recommendation;
- AK. whereas it is vital for a horizontal, comprehensive framework to be established as a matter of urgency, which, by laying down rights and obligations, protects whistle-blowers effectively throughout the Member States of the EU, as well as in the EU institutions, authorities and organisations;

***Role of whistle-blowers and the need to protect them***

1. Calls on the Commission, after carrying out an assessment of the appropriate legal base enabling the EU to take further action, to present before the end of this year a horizontal legislative proposal establishing a comprehensive common regulatory framework which will guarantee a high level of protection across the board, in both the public and private sectors as well as in national and European institutions, including relevant national and European bodies, offices and agencies, for whistle-blowers in the EU, taking into account the national context and without limiting the possibility for Member States to take further measures; stresses that there are at present a number of possibilities for legal bases enabling the EU to take action on the matter; calls on the Commission to consider them with the aim of proposing a broad, coherent and effective mechanism; reminds the Commission of the doctrine elaborated by the CJEU, through long-standing case-law, on the concept of implied competences of the Union, which allows the use of several legal bases;
2. Emphasises the unreasonable and worrying fact that citizens and journalists are being subject to prosecution rather than legal protection when disclosing information in the public interest, including information on suspected misconduct, wrongdoing, fraud or illegal activity, particularly when it comes to conduct violating fundamental principles of the EU, such as tax avoidance, tax evasion and money laundering;
3. Suggests that international agreements pertaining to financial services, taxation and competition should include provisions on the protection of whistle-blowers;
4. Highlights the need for legal certainty regarding the protective provisions afforded to whistle-blowers, as a continued lack of clarity and a fragmented approach deters potential whistle-blowers from coming forward; points out, therefore, that relevant EU legislation should establish a clear procedure for properly handling disclosures and effectively protecting whistle-blowers;

5. Recalls that any future normative framework should take into account the rules, rights and duties that govern and impact on employment; further emphasises that this should be done in consultation with the social partners and in compliance with collective bargaining agreements;
6. Calls for such legislation to ensure that companies that take fully verified retaliatory action against whistle-blowers may not receive EU funds nor enter into contracts with public bodies;
7. Encourages the Member States to develop benchmarks and indicators on whistle-blower policies in both the public and private sector;
8. Calls on the Member States to take into consideration Article 33 of the UN Convention against Corruption, underlining the role of whistle-blowers in the prevention of, and fight against, corruption;
9. Deplores the fact that only a few Member States have introduced sufficiently advanced whistle-blower protection systems; calls on those Member States which have not yet adopted such systems, or relevant principles in national law, to do so as soon as possible;
10. Stresses the need for more attention to business ethics in the educational curricula of business studies and related disciplines;
11. Encourages the Member States and the EU institutions to promote a culture of acknowledgement of the important role played by whistle-blowers in society, including through awareness-raising campaigns; calls on the Commission, in particular, to come up with a comprehensive plan on this issue; considers it necessary to foster an ethical culture in the public sector and in workplaces, so as to highlight the importance of raising employees' awareness of existing legal frameworks regarding whistle-blowing, in cooperation with trade union organisations;
12. Urges the Commission to monitor Member States' provisions on whistle-blowers with a view to facilitating the exchange of best practices, which will help to ensure more efficient protection for whistle-blowers at national level;
13. Calls on the Commission to provide a comprehensive plan to discourage asset transfers to countries outside the EU where the anonymity of corrupt persons can be maintained;
14. Takes 'whistle-blower' to mean anybody who reports on or reveals information in the public interest, including the European public interest, such as an unlawful or wrongful act, or an act which represents a threat or involves harm, which undermines or endangers the public interest, usually but not only in the context of his or her working relationship, be it in the public or private sector, of a contractual relationship, or of his or her trade union or association activities; stresses that this includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees, volunteers, student workers, temporary workers and former employees, who have evidence of such acts with reasonable grounds to believe that the information reported is true;
15. Considers that individuals who are outside the traditional employee-employer

relationship, such as consultants, contractors, trainees, volunteers, student workers, temporary workers and former employees, as well as citizens, should also be given access to reporting channels and appropriate protection when they reveal information on an unlawful or wrongful act or an act which undermines the public interest;

16. States that a clear solution for whistle-blowers working in EU-registered companies but based outside the EU is needed;
17. Considers that a breach of the public interest includes, but is not limited to, acts of corruption, criminal offences, breaches of legal obligations, miscarriages of justice, abuse of authority, conflicts of interest, unlawful use of public funds, misuse of powers, illicit financial flows, threats to the environment, health, public safety, national and global security, privacy and personal data protection, tax avoidance, consumers' rights, attacks on workers' rights and other social rights and attacks on human rights and fundamental freedoms as well as on the rule of law, and acts to cover up any of these breaches;
18. Considers that the general public interest should take precedence over the private or economic value of the information revealed, and that it should be possible to reveal information on serious threats to the public interest even when it is legally protected; takes the view, however, that special procedures should apply for information involving respect for professional ethics and classified information related to national security and defence; considers that in such cases, the report should be made to a competent authority;
19. Stresses that whistle-blowers must always be guaranteed effective protection, even if the disclosures do not concern unlawful acts, if the information is made available with the aim of ensuring that the public interest is not undermined;
20. Stresses the need for the Member States to comply with the Council of Europe Recommendation on the protection of whistle-blowers;
21. Stresses that the role of whistle-blowers in revealing serious attacks on the public interest has proved its significance on many occasions over a number of years and that whistle-blowers contribute to democracy, the transparency of politics and the economy and public information, and that they should be recognised as necessary to prevent illegitimate action; underlines that whistle-blowers have proved to be a crucial resource for investigative journalism and for an independent press; points out that guaranteeing the confidentiality of sources is fundamental to freedom of the press; calls on the Member States to ensure that the right of journalists not to reveal a source's identity is effectively protected; takes the view that journalists are also vulnerable and should therefore benefit from legal protection;
22. Notes the fact that in recent years some Member States have taken steps to strengthen whistle-blowers' rights; deplors, however, the fact that whistle-blowers continue to be subject to civil and criminal proceedings in a number of Member States, especially where the existing means to defend, support and protect them are absent, insufficient or ineffective; notes that, in addition, the disparities between Member States lead to legal insecurity, forum shopping and the risk of unequal treatment;
23. States that the protection of whistle-blowers is essential for the proper application of the competences of the EU;

24. Believes that the lack of adequate whistle-blower protection has a negative impact on the protection of the EU's financial interest;
25. Considers that the implementation of comprehensive legal regulations on the protection of whistle-blowers encourages a 'speak up' culture and that whistle-blowing should be promoted as an act of good citizenship; urges the Member States and the EU institutions, therefore, to promote the positive role that whistle-blowers play, as well the serious concerns regarding their often vulnerable and defenceless position, in particular through awareness-raising and protection campaigns, communication and training efforts; recommends to the Commission, in particular, that a comprehensive plan on this issue be presented; calls, in this context, for a website to be launched where useful information on the protection of whistle-blowers should be provided, and through which complaints can be submitted; stresses that this website should be easily accessible to the public and should keep their data anonymous;
26. Calls for action to change the public perception of whistle-blowers, particularly by politicians, employers and the media, by highlighting their positive role as an early-warning mechanism and a deterrent, enabling the detection and prevention of abuses and corruption, and as an accountability mechanism enabling public scrutiny of governments and companies;
27. Encourages Member States to be proactive in promoting an open culture within the workplace, whether public or private, which enables organisations to operate to high ethical standards, gives employees the confidence to speak up, and therefore enables action to be taken to prevent or remedy any threats or harm;
28. Encourages Member States to evaluate regularly the effectiveness of the measures they implement, taking account of public opinion on attitudes towards the act of whistle-blowing and whistle-blowers, cross-sectoral surveys of senior managers responsible for receiving and handling reports, and independent research studies on whistle-blowing across workplaces;
29. Encourages those Member States that have not yet adopted legislation on whistle-blowing to do so in the near future, and calls on the Commission to consider creating a platform for exchanging best practices in this area between Member States and also with third countries;
30. Highlights the importance of research and the exchange of best practices to encourage better protection for whistle-blowers at European level;
31. Urges the European Court of Auditors and the Office of the European Ombudsman to publish by the end of 2017: (1) special reports containing statistics and a clear track record of whistle-blowing cases identified in the European institutions and in businesses, associations, organisations and other bodies registered in the Union; (2) the follow-up by the institutions concerned in relation to the cases revealed, on the basis of the current Commission guidelines and rules; (3) the outcome of each investigation opened as a result of the information received from whistle-blowers; (4) the measures envisaged in every case for the whistle-blowers' protection;

### ***Reporting mechanism***

32. Notes that the absence of clearly identified means of protection and of safe reporting, as well as the potential absence of follow-up, constitutes a barrier to whistle-blowers' activities, can dissuade them from whistle-blowing and can lead a number of whistle-blowers to remain silent; expresses its concern about retaliation and pressures which whistle-blowers face when they address the wrong person or party within their organisation;
33. Considers that it is necessary to establish a consistent, credible and reliable system which enables reports to be delivered inside the organisation, to competent authorities and outside the organisation; believes that such a system would facilitate the assessment of the credibility and validity of a report made within its framework;
34. Calls on the Commission to study a system which would enable whistle-blowing inside and outside the organisation; stresses that, to do so, clear, fair and equitable procedures should be established, ensuring full respect for the fundamental and legal rights of both the whistle-blower and the alleged wrongdoer; believes that employers should be encouraged to introduce internal reporting procedures and that one independent and impartial person or entity should be responsible for collecting reports in each organisation; considers that employee representatives should be involved in the assignment of that role; underlines that the recipient of the alert should give appropriate follow-up to each report received and keep the whistle-blower informed of that follow-up in a reasonable time frame;
35. Believes that each organisation should set up clear reporting channels allowing the whistle-blower to blow the whistle inside his or her organisation; underlines that each employee should be informed of the relevant reporting procedure, which should guarantee confidentiality and a treatment of the alert within a reasonable time frame; underlines that the whistle-blower must remain able to turn to the appropriate public authorities, non-governmental organisations or the media, especially in the absence of a favourable response from the organisation, or if reporting internally or to the competent authorities would obviously compromise the efficiency of the alert, if the whistle-blower is at risk or urgently needs to report information;
36. Highlights the right of the public to be informed of any wrongdoing that undermines the public interest; underlines, in that respect, that it should always be possible for a whistle-blower publicly to disclose information on an unlawful or wrongful act or an act which undermines the public interest;
37. Points out that this Resolution of Parliament also calls for the EU institutions, in co-operation with all relevant national authorities, to introduce and take all necessary measures to protect the confidentiality of information sources, and calls therefore for the creation of a controlled website where complaints can be submitted in a strictly confidential manner;
38. Believes that reporting outside the organisation, including directly to the public without first going through an internal step, is not grounds to invalidate a report, file a lawsuit or refuse to give protection; believes that this protection should be granted independently of the chosen reporting channel and on grounds of the information revealed and the fact that the whistle-blower had reasonable grounds to believe that it was true;

### *Protection given to whistle-blowers*

39. Expresses its concerns about the risks run by whistle-blowers at their place of work, in particular the risks of direct or indirect retaliation by the employer and by those working for or acting on behalf of the employer; stresses that retaliation usually takes the form of suspending, slowing down or stopping career progression, or even of dismissal, along with psychological harassment; stresses that retaliation is a barrier to whistle-blowers' activities; believes that it is necessary to introduce protective measures against retaliation; takes the view that retaliation should be penalised and sanctioned effectively; stresses that, once someone is recognised as a whistle-blower, measures should be taken to protect him or her, to bring to an end any retaliation measures taken against him or her, and to grant the whistle-blower full compensation for the prejudice and damage incurred; is of the opinion that these provisions should be included in the Commission's proposal for a horizontal whistle-blower protection directive;
40. Considers that whistle-blowers should have the option of lodging an application for interim relief to prevent retaliation, such as dismissal, until there is an official outcome of any administrative, judicial or other proceedings;
41. Emphasises that no employment relationship should restrict someone's right of freedom of expression and that no one should be discriminated against in the event of exercising that right;
42. Points out that any future normative framework should take into account the rules, rights and duties that govern and impact on employment; emphasises, furthermore, that this should be done with the involvement of the social partners and in compliance with collective bargaining agreements;
43. Stresses that whistle-blowers and their family members, as well as anyone who assists them and whose lives or safety are in jeopardy, must be entitled to proper and effective protection of their physical, moral and social integrity and their livelihoods by being granted the highest possible level of confidentiality;
44. Emphasises that protection should also be provided if a whistle-blower draws attention to conduct involving a Member State;
45. Notes that investigative journalists and members of the independent press pursue a profession that is often solitary and in the course of which they face many kinds of pressure, and therefore that it is essential they be protected against all attempts at intimidation;
46. Suggests that interim relief pending the outcome of civil proceedings should be available for persons who have been the victim of retaliation for having made a public interest report or disclosure, particularly in cases of loss of employment;
47. Condemns the practice of gagging orders, which involve filing or threatening to file lawsuits against the whistle-blower not in an effort to seek justice but in an effort to bring about self-censorship or financial, mental or psychological exhaustion; believes that such abuse of process should be subject to criminal penalties and sanctions;

48. Points out the risk that whistle-blowers run of having legal and civil proceedings brought against them; stresses that they are often the weaker party in trials; considers, therefore, that in the case of alleged retaliatory actions taken against the whistle-blower, the employer shall provide evidence that these actions are unrelated to the report made by the whistle-blower; considers that the protection of the whistle-blower should be granted on the basis of the information exposed and not on the intention of the whistle-blower; stresses, however, that the whistle-blower must have reported information that he or she believed to be true; takes the view that confidentiality should be guaranteed throughout the proceedings and that the identity of the whistle-blower shall not be revealed without his or her consent; underlines that a breach of the confidentiality of identity without the whistle-blower's consent should be subject to criminal penalties and sanctions;
49. Takes the view that whistle-blowers should not be liable for prosecution, civil legal action or administrative or disciplinary penalties because they have made a report;
50. Believes that the option to report anonymously could encourage whistle-blowers to share information which they would not share otherwise; stresses, in that regard, that clearly regulated means of reporting anonymously, to the national or European independent body responsible for collecting reports, verifying their credibility, following up on the response given and providing guidance to whistle-blowers, including in the digital environment, should be introduced, setting out exactly the cases in which the means of reporting anonymously apply; stresses that the identity of the whistle-blower and any information allowing his or her identification should not be revealed without his or her consent; considers that any breach of anonymity should be subject to sanctions;
51. Stresses that nobody should lose the benefit of protection on the sole grounds that he or she has misjudged the facts or that the perceived threat to the public interest did not materialise, provided that, at the time of reporting, he or she had reasonable grounds to believe them to be true; recalls that, in the event of false accusations, those responsible should be held accountable and not benefit from the protection granted to whistle-blowers; stresses that any person who is prejudiced, whether directly or indirectly, by the reporting or disclosure of inaccurate or misleading information should be afforded the right to seek effective remedies against malicious or abusive reporting;
52. Recalls the importance of devising instruments to ban any form of retaliation, whether this is passive dismissal or passive measures; urges the Member States to refrain from criminalising the actions of whistle-blowers in disclosing information on unlawful or wrongful acts or acts which undermine or endanger the public interest;
53. Recalls that in the meantime, current EU law must be applied properly by both the EU institutions and the Member States, and that it should be interpreted in such a way as to offer whistle-blowers acting in the public interest the best possible protection; stresses that whistle-blower protection has already been recognised as an important mechanism for ensuring the effective application of EU legislation; calls, therefore, on the Member States to refrain from criminalising the actions of whistle-blowers who disclose information in the public interest;

### *Supporting whistle-blowers*

54. Stresses the role that public authorities, trade unions and civil society organisations play in

supporting and helping whistle-blowers in their dealings within their organisation;

55. Stresses that, in addition to the professional risks, whistle-blowers, as well as people who assist them, also face personal, psychological, social and financial risks; believes that, where applicable, psychological support should be provided, that specialised legal aid should be given to whistle-blowers who ask for it and lack sufficient resources, that social and financial aid should be given to those who express a duly justified need for it, and as a protective measure if civil or judicial proceedings are brought against a whistle-blower, in accordance with national law and practices; adds that compensation should be granted, irrespective of the nature of the damage suffered by the whistle-blower as a result of making a report;
56. Refers, in this respect, to the fact that the European Ombudsman has indicated in Parliament that she is willing to examine the possibility of creating such a body within the Ombudsman's Office, and urges the Commission to look into the feasibility of entrusting the European Ombudsman, which already has a competence to investigate complaints of malpractices within the EU institutions, with these tasks;
57. Calls on Member States and EU institutions, in cooperation with all relevant authorities, to introduce and take all possible necessary measures to protect the confidentiality of the information sources in order to prevent any discriminatory actions or threats, as well as to establish transparent channels for information disclosure, to set up independent national and EU authorities to protect whistle-blowers, and to consider providing those authorities with specific support funds; calls also for the establishment of a centralised European authority for the effective protection of whistle-blowers and people who assist their acts based on the model of national privacy watchdogs;
58. Calls on the Commission, in order for these measures to be effective, to develop instruments focusing on providing protection against unjustified legal prosecutions, economic sanctions and discrimination; suggests the setting up of national funds or a European fund, financed in part from monies recovered or proceeds from fines, to give appropriate financial support to whistle-blowers in the EU;
59. Calls on the Member States to establish independent bodies, with sufficient budgetary resources, adequate competence and appropriate specialists, responsible for collecting reports, verifying their credibility, following up on the response given and providing guidance to whistle-blowers, particularly in the absence of a positive response from their organisation, as well as orienting them towards appropriate financial help, especially in cross-border situations or in cases directly involving Member States or the EU institutions; suggests that the latter publish an annual report on the alerts received and their treatment, while respecting the confidentiality requirement of potentially ongoing investigations;
60. Stresses that consideration should be given to making access to information and confidential advice free of charge for individuals contemplating making a public interest report or disclosure on unlawful or wrongful acts which undermine or endanger the public interest; notes that structures able to provide such information and advice should be identified and their details made available to the general public;
61. Emphasises that, in addition to all the protection measures afforded to whistle-blowers in



general, these whistle-blowers in particular must be guaranteed proper reception arrangements, accommodation and safety in a Member State which does not have an extradition agreement with the country which committed the acts in question; in cases where the European Union has an extradition agreement with the third country involved, calls on the Commission, pursuant to Article 67(2) TFEU on European asylum policy, to use its powers to take all the measures required to protect these whistle-blowers, who are particularly vulnerable to severe reprisals in the country whose illegal or fraudulent practices they brought to public attention;

62. Calls on the Commission to propose the establishment of a similar body at EU level, with sufficient budgetary resources, adequate competence and appropriate specialists, responsible for coordinating Member State activities, particularly in cross-border cases; believes that that European body should also be able to collect reports, verify their credibility, issue binding recommendations and guide whistle-blowers when the response given by the Member State or national bodies is obviously not appropriate; suggests that the latter publish an annual report on the alerts received and their treatment, while respecting the confidentiality requirement of potentially ongoing investigations; considers that the European Ombudsman's mandate could be extended to serve that purpose;
63. Believes that, once an alert has been recognised as serious, it should lead to proper investigation and be followed by appropriate measures; underlines that, during the investigation, the whistle-blower should be allowed to clarify his or her complaint and provide additional information or evidence;
64. Encourages the Member States to develop data, benchmarks and indicators on whistle-blower policies in the public and private sectors;
65. Requests that the forthcoming review of the European Supervisory Authorities (ESAs) adapts their powers and procedures with regard to protecting whistle-blowers;
66. Calls on the EU institutions to address the Ombudsman's own initiative report of 24 July in 2014, in compliance with Article 22(c) of the new Staff Regulations, inviting all EU bodies to adopt ethical alert mechanisms and whistle-blowing legal frameworks directly based on the internal rules of the Ombudsman's office; reiterates its determination to take such action;
67. Considers that whistle-blowers should also have the right to review and comment on the outcome of the investigation related to their disclosure;
68. Calls on the EU institutions and other EU bodies to lead by example by applying, without delay, the European Ombudsman's guidelines; calls on the Commission to implement in full, both for itself and for EU agencies, its own guidelines protecting whistle-blowers in accordance with its 2012 staff regulations; calls on the Commission effectively to cooperate and coordinate efforts with other institutions, including the European Public Prosecutor's Office, to protect whistle-blowers;
69. Points to the need for a better system for reporting corporate malpractices, one that complements and seeks to improve the efficiency of the current National Contact Points for the OECD Guidelines for Multinational Enterprises;

70. Stresses that investigations into the issues raised by whistle-blowers should be conducted independently and within the shortest time frame possible, protecting too the rights of individuals potentially implicated by a disclosure; underlines that both the whistle-blower and any person implicated by a disclosure should be able to provide additional arguments and evidence throughout the investigation, and that they should be kept informed of the handling of the disclosure;
71. Welcomes the fact that the Commission has finally introduced a channel for whistle-blowers to report or disclose information on competition and cartel agreements, but stresses the need for simplifying procedures and insists that there should not be an excessive number of channels;
72. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY MEMORANDUM

Over a number of years, the crucial role that whistle-blowers play in revealing serious breaches of the public interest has been brought to light as a result of a series of scandals in such varied areas as public-health protection, the environment and tax avoidance. Today, protecting whistle-blowers is one of the best ways to safeguard the public interest and bring about responsible and ethical conduct in public and private institutions. However, the protection offered, if at all, is still largely inadequate and is too disjointed to offer a coherent framework in the EU, whose activities are currently limited to sectoral protections.

Your rapporteur believes that the EU should take action by means of a horizontal legislative instrument, in accordance with its objectives regarding democracy, pluralism of opinions and freedom of expression. There are a number of possible legal bases available to the Commission to propose such an instrument, so it should take that route as soon as possible.

A number of international standards to protect whistle-blowers have already been developed. Therefore EU legislation should support them. In accordance with those standards, the definition of 'whistle-blower' should be broad enough to cover as many scenarios as possible and thus protect private-sector and public-sector employees, consultants and also the self-employed. Moreover, it should not be limited to reports on unlawful acts but should also cover disclosures of a breach of the public interest. Clear reporting mechanisms should be introduced in organisations to facilitate internal whistle-blowing. That cannot, however, be the only means of reporting, and whistle-blowing to an independent institution or to the public should be authorised. At EU level, an agency specifically dedicated to advice, guidance and collection of reports should be established.

To better protect people who decide to blow the whistle, they should be guaranteed that their confidentiality is protected, and a reversal of the burden of proof should be introduced. Lastly, financial and psychological support and compensation for damages would complete the measures, and effective sanctions against those who attempt to prevent whistle-blowers from speaking out should be introduced.

## **ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report:

<b>Entity and/or person</b>
UNI Europa
FIRST-CISL
European Federation of Journalists
Eurocadres
Transparency International France
Transparency International
Finnish trade union representation to the EU
CCI Paris-Ile de France
Ascent-EU - Good Governance, Anti-Corruption & Rule of Law Consultant
CADRES CFDT
EBU
Brussels Office of the Swedish Trade Unions
Finnish trade union representation to the EU
Blueprint for speech

6.9.2017

## OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur for the opinion (\*): Molly Scott Cato

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

### SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas whistle-blowers have played a prominent role in detecting and reporting suspected misconduct, wrongdoing, fraud or illegal activity, as well as in identifying and publishing tax-related public interest cases, including in the LuxLeaks, SwissLeaks and Panama Papers revelations, thus contributing substantially to increased reforms to combat financial and tax fraud, money laundering and corruption, which hamper economic development and the rule of law;
- B. whereas since the economic, debt and financial crisis, we have seen a wave of action against international tax avoidance and evasion; whereas more transparency in the financial services sphere is needed in order to discourage malpractice, and some Member States have already experience with central repositories for reporting actual or possible breaches of financial prudential rules; whereas the United Nations adopted its Convention against Corruption in 2003<sup>1</sup>; whereas Parliament has established two special committees and one committee of inquiry following these revelations; whereas it has already called for protection of whistle-blowers in several resolutions<sup>2</sup>; whereas the initiatives already agreed upon to strengthen international information exchange in tax matters have been helpful, and whereas the various tax-related leaks have revealed large amounts of

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<sup>1</sup> [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50027\\_F.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50027_F.pdf)

<sup>2</sup> See e.g. its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (Texts adopted, P8\_TA(2016)0310) and its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union' (Texts adopted, P8\_TA(2015)0457).

important information on malpractices that would otherwise not have surfaced;

- C. whereas, while the focus of global anti-corruption efforts have thus far predominantly been focused on public sector wrongdoings, recent leaks have highlighted the role of financial institutions, advisers and other private companies in facilitating corruption;
- D. whereas the introduction of public beneficial ownership registries for company trusts, and similar legal arrangements and other transparency measures for investment vehicles, may act as a counter-deterrent against the wrongdoings that whistle-blowers typically address;
- E. whereas whistle-blowing is very often not restricted to economic and financial matters; whereas the lack of adequate protection could dissuade potential whistle-blowers from reporting misconduct in order to avoid the risk of reprisal and/or retaliation; whereas the OECD has reported that in 2015, 86 % of companies had a mechanism to report suspected instances of serious corporate misconduct, but over one-third of them did not have a written policy on protecting whistle-blowers from reprisals, or did not know if such a policy existed; whereas several whistle-blowers exposing economic and financial wrongdoings, misconducts or illegal activities have been subject to prosecution; whereas persons who report or disclose information in the public interest often suffer reprisals, as do family members and colleagues, resulting, for example, in the loss of their careers; whereas the European Court of Human Rights has a well-established case law regarding whistle-blowers, but the protection of whistle-blowers should be guaranteed by law; whereas the Charter of Fundamental Rights of the European Union ensures the freedom of expression and the right to good administration;
- F. whereas it is regrettable that the existing channels for making formal complaints about misconduct by multinational companies rarely result in any concrete punishments for wrongdoings;
- G. whereas, while the protection of whistle-blowers at Union level has neither been implemented in all Member States nor harmonised at EU level, most Member States have ratified the UN Convention against Corruption, making it obligatory to provide appropriate and effective protection to whistle-blowers;
- H. whereas EU law already contains certain provisions protecting whistle-blowers against reprisals, including with regard to money laundering, but does not yet provide for horizontal legislation applying to all public and private bodies; whereas fragmented provisions could prove to be unclear and inefficient; whereas the Commission is therefore asked to make a thorough evaluation of the legal bases for possible further action at EU level in this regard; whereas effective protection of whistle-blowers would contribute to the efficiency of the internal market and reinforce citizens' trust in the EU;
- I. Urges the Commission to make a thorough assessment of the possible legal basis for further action at EU level and, if appropriate, to submit comprehensive horizontal legislation, including tools to support whistle-blowers to ensure their effective protection as soon as possible, and to come forward with a proposal to ensure adequate financial assistance to whistle-blowers; calls on the Commission to assess the possibility of creating an independent European body with the competence of receiving whistle-blowers' complaints, including in an anonymous and confidential manner, and, when justified, of providing advice and protection; notes that whistle-blower protection should cover public

and private sector without distinction; calls for such legislation to ensure that companies that take fully verified retaliatory action against whistle-blowers may not receive EU funds nor enter into contracts with public bodies; suggests that, in any case, the Commission produce an annual report assessing the current state of protection of whistle-blowers in the European Union; suggests that international agreements pertaining to financial services, taxation and competition should include provisions on the protection of whistle-blowers; suggests the creation of a pan-European common fund for whistle-blower protection, with a view to ensuring adequate financial assistance to whistle-blowers;

2. Emphasises the unreasonable and worrying fact that citizens and journalists are being subject to prosecution rather than legal protection when disclosing information in the public interest, including information on suspected misconduct, wrongdoing, fraud or illegal activity, particularly when it comes to conduct violating fundamental principles of the EU, such as tax avoidance, tax evasion and money laundering;
3. Calls, furthermore, on the Member States to adopt a broad legal definition of whistle-blower with a view to protecting them effectively through national legislation; suggests that whistle-blowers in the public and private sectors should enjoy equal protection, and should not be bound by any contractual obligation preventing reports or disclosures that are in the public interest; calls on the Member States to ensure that the protection includes exemptions from proceedings related to the protected disclosure and disciplinary measures or other forms of reprisal;
4. Calls on the Member States to take into consideration Article 33 of the UN Convention against corruption, underlining the role of whistle-blowers in the prevention of, and fight against, corruption;
5. Recalls the conclusion of its TAXE special committee, and points out the need to ensure that whistle-blowers are able to report not only illegal activities, but also wrongdoing and any information on matters that represent a threat or harm to the public interest;
6. Reiterates that whistle-blowers may often provide the only means of bringing illegal activities to the public notice, given the often technical nature of the information in question and the barriers that public officials face in their attempts to access it;
7. Argues that whistle-blowers should be free to report anonymously, or to lodge complaints, as a matter of priority, to the internal reporting mechanisms of the organisation concerned or to the competent authorities, and, further, that they should be protected, regardless of their choice of reporting channel;
8. stresses the importance of explicitly entrusting competent authorities and regulatory and law enforcement bodies with the responsibility of maintaining reporting channels, receiving, handling and investigating suspected malpractice, while safeguarding the confidentiality of the source, where applicable, and the rights of the affected parties;
9. Considers that all EU and national public and private organisations should have internal whistle-blowing procedures for their employees; underlines the importance of awareness-raising, among employees and other individuals, of already existing legal frameworks on whistle-blowing, and calls on EU and national bodies to conduct regular information

campaigns and to provide multilingual and comprehensible information on the basic procedures of whistle-blowing;

10. Requests that the forthcoming review of the European Supervisory Authorities (ESAs) adapts their powers and procedures with regard to protecting whistle-blowers;
11. Stresses that in litigation procedures against whistle-blowers, the burden of proof should fall on the party initiating the litigation to demonstrate that the information revealed does not constitute proof of either illegal conduct or wrongdoing, nor of a threat to the public interest; condemns legal proceedings against whistle-blowers that are purposely conducted in bad faith, in response to which sanctions should be appropriate; stresses that effective whistle-blower protection is essential to guaranteeing the right to free speech and freedom of information, and that conflicting norms which govern matters of secrecy and confidentiality should be reviewed in line with European human rights jurisprudence, so as to ensure that such exceptions are necessary and proportionate;
12. Calls on the Member States to ensure that whistle-blowers have unhindered access to independent advice and support, and can claim compensation for harassment, or for the loss of current or future livelihood, as means of retaliation for disclosures made under whistle-blower protection; calls on the Commission to investigate whether there are any best practices available that could be shared to this end;
13. Calls on the EU institutions and other EU bodies to lead by example by applying, without delay, the European Ombudsman guidelines; calls on the Commission to fully implement, both for itself and for EU agencies, their own guidelines protecting whistle-blowers in accordance with its 2012 staff regulations; calls on the Commission to effectively cooperate and coordinate efforts with other institutions, including the European Public Prosecutor's Office, to protect whistle-blowers;
14. Stresses that communication between whistle-blowers and EU institutions and agencies must be strengthened; considers that complaints from citizens must be treated fairly and with respect, and that there should be continuous contact between the EU institution or agency dealing with a complaint and the whistle-blower concerned, with regular updates on the case;
15. Urges the Commission to provide a comprehensive action plan on raising awareness about the protection and defence of whistle-blowers;
16. Points to the need for a better system for reporting corporate malpractices, one that complements and seeks to improve the efficiency of the current National Contact Points for the OECD Guidelines for Multinational Enterprises;
17. Calls on the Commission to provide a comprehensive plan to discourage asset transfers to countries outside the EU where the anonymity of corrupt persons can be maintained;
18. Stresses the need for more attention to business ethics in the educational curricula of business studies and related disciplines.



## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	4.9.2017						
<b>Result of final vote</b>	<table style="width: 100%; border: none;"> <tr> <td style="width: 100px;">+:</td> <td style="text-align: right;">36</td> </tr> <tr> <td>–:</td> <td style="text-align: right;">0</td> </tr> <tr> <td>0:</td> <td style="text-align: right;">13</td> </tr> </table>	+:	36	–:	0	0:	13
+:	36						
–:	0						
0:	13						
<b>Members present for the final vote</b>	Gerolf Annemans, Burkhard Balz, Pervenche Berès, Udo Bullmann, Esther de Lange, Markus Ferber, Jonás Fernández, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Cătălin Sorin Ivan, Petr Ježek, Othmar Karas, Wajid Khan, Philippe Lamberts, Werner Langen, Bernd Lucke, Olle Ludvigsson, Fulvio Martusciello, Marisa Matias, Gabriel Mato, Costas Mavrides, Bernard Monot, Luděk Niedermayer, Dimitrios Papadimoulis, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Marco Valli, Jakob von Weizsäcker, Marco Zanni						
<b>Substitutes present for the final vote</b>	Enrique Calvet Chambon, Matt Carthy, Manuel dos Santos, Ashley Fox, Eva Joly, Paloma López Bermejo, Thomas Mann, Luigi Morgano, Lieve Wierinck						
<b>Substitutes under Rule 200(2) present for the final vote</b>	Elżbieta Katarzyna Łukacijewska						

**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>36</b>	<b>+</b>
ALDE	Enrique Calvet Chambon, Petr Ježek, Ramon Tremosa i Balcells, Lieve Wierinck
ECR	Bernd Lucke, Pirkko Ruohonen-Lerner
EFDD	Marco Valli
ENF	Gerolf Annemans, Bernard Monot
GUE/NGL	Matt Carthy, Paloma López Bermejo, Marisa Matias, Dimitrios Papadimoulis
PPE	Brian Hayes, Othmar Karas, Werner Langen, Thomas Mann
S&D	Pervenche Berès, Udo Bullmann, Jonás Fernández, Neena Gill, Roberto Gualtieri, Cătălin Sorin Ivan, Wajid Khan, Olle Ludvigsson, Costas Mavrides, Luigi Morgano, Alfred Sant, Pedro Silva Pereira, Peter Simon, Paul Tang, Manuel dos Santos, Jakob von Weizsäcker
Verts/ALE	Eva Joly, Philippe Lamberts, Molly Scott Cato

<b>0</b>	<b>-</b>

<b>13</b>	<b>0</b>
ECR	Ashley Fox, Kay Swinburne
ENF	Marco Zanni
PPE	Burkhard Balz, Markus Ferber, Gunnar Hökmark, Danuta Maria Hübner, Elżbieta Katarzyna Łukacijewska, Fulvio Martusciello, Gabriel Mato, Luděk Niedermayer, Anne Sander, Esther de Lange

Légende des signes utilisés:

+ : for

- : against

0 : abstention

## OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: Dennis de Jong

### SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas whistle-blowers often play an important and even crucial role in preventing, detecting and disclosing irregularities, illegalities, fraud, corruption and other wrongdoing or breaches of the rule of law at European and national level both in the public and the private sectors;
- B. whereas the courage of those who, notwithstanding their personal and professional risks, do a service to the society by reporting or disclosing information in defence of the public interest is such that governments should provide for adequate legal safeguards and protection, including compensation for financial and other damages, for example, due to whistle-blowers losing their jobs as a consequence of their reporting or disclosing acts;
- C. whereas the activity of whistle-blowers, based on the principles of transparency and integrity, is essential for whistle-blowing, so their protection should be guaranteed by law and reinforced throughout the European Union, but only if the purpose of their action is to protect the public interest by acting in good faith according to the jurisprudence of the European Court of Human Rights;
- D. whereas Parliament has recently adopted two documents: a Resolution<sup>1</sup> on the role of whistle-blowers in the protection of EU's financial interests and a Report<sup>2</sup> on the protection of the EU's financial interests – Fight against fraud;
- E. whereas since 1 July 2014 almost all European institutions and agencies have incorporated, as is mandatory, measures to protect whistle-blowers into their internal rules

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<sup>1</sup> Texts adopted, P8\_TA(2017)0022.

<sup>2</sup> Texts adopted, P8\_TA(2017)0206.

of procedure, in accordance with Articles 22(b) and (c) of the Staff Regulations;

- F. whereas an increasing number of economic fraud investigations may be of a cross-border nature, with whistle-blowers playing a key role in revealing what lies behind illegal acts perpetrated from abroad and detrimental to national economic interests;
- G. whereas Article 33 of the UN Convention against Corruption, to which the European Union and its Member States are parties, clearly stipulates the need for appropriate legal measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with that Convention;
1. Believes that the lack of adequate whistle-blower protection has a negative impact on the protection of the EU's financial interest;
  2. Urges the Commission to take all necessary steps to implement without any further delay the resolution on the role of whistle-blowers in the protection of EU's financial interests and, in particular, to submit a horizontal legislative proposal aimed at establishing a minimum level of protection across the Union for European whistle-blowers and an effective and comprehensive European whistle-blower protection programme;
  3. Notes that only a few Member States have introduced sufficiently advanced whistle-blower protection systems, notwithstanding the essential need of whistle-blower protection in the prevention of, and fight against, corruption, and despite the fact that whistle-blower protection is recommended in Article 33 of the UN Convention against Corruption; calls on those Member States which have not yet adopted the principles to protect whistle-blowers in their domestic law, to do so as soon as possible;
  4. Notes that, although the focus of the resolution adopted by Parliament is on whistle-blowers in the context of the financial interests of the EU, many of the proposed measures should also apply to whistle-blowers in a broader sense, including, but not limited to, environmental protection, workers' rights, consumer protection; stresses the contribution made by investigative journalists and considers that they should obtain an equivalent level of protection;
  5. Calls on the Commission, in this respect, to interpret the term 'financial interests' in its broadest possible sense, so as also to cover those cases which indirectly affect the EU's financial interests;
  6. Urges the introduction of effective arrangements for protecting anyone who reports wrongdoing at the workplace, such as harassment, job blackmail, illegal recruitment and dismissal practices, pay discrimination and any other form of law-breaking;
  7. Calls on the Commission to include in its legislative proposal measures to protect workers against retaliation by their employer, due to their acts as whistle-blowers, including safeguarding their anonymity and the confidentiality of information, and providing legal, financial and psychological assistance, whenever needed, whilst ensuring that the burden of proof in claims of victimisation or reprisal rests on the employer;
  8. Welcomes the fact that the Commission has finally introduced a channel for whistle-

blowers to report or disclose information on competition and cartel agreements, but stresses the need for simplifying procedures and insists that there should not be an excessive number of channels;

9. Stresses however that whistle-blowers may use a non-institutional channel, such as the media, and that this should not prevent the EU Institutions to pro-actively and officially process information revealed which touches upon EU interests; enquiries should be systematic when information touching upon EU interests are divulged, whatever the channel;
  10. Calls, therefore, on the Commission to build on the resolution recommendation 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 whistle-blowers use 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;
  11. Refers, in this respect, to the fact that the European Ombudsman has indicated in Parliament that she is willing to examine the possibility of creating such a body within the Ombudsman's Office, and urges the Commission to look into the feasibility of entrusting the European Ombudsman, which already has a competence to investigate complaints of malpractices within the EU institutions, with these tasks;
  12. Recalls that the same resolution of Parliament also calls for the EU institutions, in co-operation with all relevant national authorities, to introduce and take all necessary measures to protect the confidentiality of the information sources and calls therefore for the creation of a controlled website where complaints can be submitted in a purely confidential manner;
  13. Regrets that not all of the EU's agencies have implemented internal rules to protect whistle-blowers and calls on those agencies to implement the internal rules in accordance with Articles 22a, 22b and 22c of the Staff Regulations;
  14. Considers that the sector-specific legislation, such as in the field of the protection of the financial interests of the EU, should not in any way replace or delay the adoption of general provisions with uniform minimum standards of legal protection of whistle-blowers; therefore calls on the Commission to submit a horizontal legislative proposal on the protection of whistle-blowers without any further delay.
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## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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<b>Date adopted</b>	4.9.2017
<b>Result of final vote</b>	+: 19 -: 0 0: 3
<b>Members present for the final vote</b>	Jonathan Arnott, Inés Ayala Sender, Zigmantas Balčytis, Dennis de Jong, Tamás Deutsch, Martina Dlabajová, Raffaele Fitto, Luke Ming Flanagan, Ingeborg Gräßle, Cătălin Sorin Ivan, Jean-François Jalkh, Arndt Kohn, Claudia Schmidt, Bart Staes, Hannu Takkula, Indrek Tarand, Marco Valli, Derek Vaughan, Joachim Zeller
<b>Substitutes present for the final vote</b>	Caterina Chinnici, Brian Hayes, Julia Pitera

**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>19</b>	<b>+</b>
ALDE	Martina Dlabajová, Hannu Takkula
ECR	Raffaele Fitto
EFDD	Marco Valli
GUE/NGL	Luke Ming Flanagan, Dennis de Jong
PPE	Tamás Deutsch, Ingeborg Gräßle, Brian Hayes, Julia Pitera, Claudia Schmidt, Joachim Zeller
S&D	Inés Ayala Sender, Zigmantas Balčytis, Caterina Chinnici, Cătălin Sorin Ivan, Arndt Kohn, Derek Vaughan
Verts/ALE	Bart Staes

<b>0</b>	<b>-</b>

<b>3</b>	<b>0</b>
EFDD	Jonathan Arnott
ENF	Jean-François Jalkh
Verts/ALE	Indrek Tarand

Key:

+ : for

- : against

0 : abstention

13.7.2017

## **OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS**

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: David Casa

### **SUGGESTIONS**

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible to incorporate the following suggestions into its motion for a resolution:

- A. whereas the role of whistle-blowers within both the public and private sectors is to help in exposing, deterring, and preventing wrongdoing, such as mismanagement, fraud and corruption, thus contributing to the promotion of human rights, the rule of law, freedom of expression, transparency and democratic accountability, as well as workers' rights; whereas whistle-blowers are often employees bound by a working relationship who are dependent on their salary as their means of living income;
- B. whereas the importance of the protection of whistle-blowers has been recognised by all major international instruments concerning corruption and whistle-blowing standards have been set out by the United Nations Convention against Corruption (UNCAC), Council of Europe Recommendation CM/Rec(2014)7 and the 2009 OECD Anti-Bribery Recommendation;
- C. whereas recent mass leaks revealing corruption, such as the Panama Papers affair and Swiss Leaks, and the disclosure of the circumventing and breaches of rules on labour law leading in certain cases to precarious employment, confirm the importance of the role played by whistle-blowers in defending the public interest; whereas there is currently insufficient recognition and protection of whistle-blowers in Europe;
- D. whereas serious concerns have often been raised that whistle-blowers acting in the public interest can face hostility, harassment, intimidation and exclusion at their place of work, impediments to future employment, loss of livelihood and often also serious threats to their family members and colleagues; whereas fears of retaliation can have a deterrent effect on whistle-blowers, thereby endangering the public interest;



- E. whereas workplaces need to cultivate a working environment within which people feel confident in raising concerns about potential wrongdoings such as failings, misconduct, mismanagement, fraud or illegal actions; whereas it is extremely important to foster the right culture that allows people to feel able to raise issues without fear of reprisals that might affect their current and future employment situation;
  - F. whereas the objective of whistle-blowing should be the reporting of acts that represent a threat to the public interest, a breach of law, or any other wrongdoing or misconduct;
  - G. whereas some Member States already have laws that protect whistle-blowers, but others do not, which leads to limited or uneven protection of whistle-blowers across the EU; whereas this is particularly significant where there are cross-border or EU-wide implications; whereas this creates legal uncertainty;
  - H. whereas, given that the existence of a national legal framework to protect whistle-blowers does not always guarantee the proper implementation and effectiveness of whistle-blower protection, it is essential that Member States ensure compliance with existing national legislation to protect whistle-blowers;
  - I. whereas corruption is a serious problem facing the European Union today, as it can result in the failure of governments to protect the population, workers, the rule of law and the economy, in a deterioration of public institutions and services, economic growth and competitiveness in various fields, and in a loss of trust in the transparency and democratic accountability of public and private institutions and industries; whereas corruption is estimated to cost the EU economy EUR 120 billion annually or 1 % of EU GDP;
  - J. whereas economic intelligence can be cross-border in scope and whereas whistle-blowers play a major role in bringing to light illegal acts carried out in other countries against national economic interests;
  - K. whereas whistle-blowers are also of key importance in identifying mistakes, challenges or problems within an organisation at an early stage; whereas there can be an organisational culture of learning from mistakes if this practice is respected; whereas in some organisations and Member States this has led to support for the reporting of mistakes and therefore to organisational change;
1. Calls for action to change the public perception of whistle-blowers, particularly by politicians, employers and the media, by highlighting their positive role as an early warning mechanism and as a deterrent to detect and prevent abuses and corruption, and as an accountability mechanism to enable public scrutiny of governments and companies;
  2. Welcomes the Council of Europe recommendation concerning the scope of a European framework for the protection of whistle-blowers which should cover all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not;
  3. Calls on the Commission, after assessment of the legal basis, consultation of social partners, and in compliance with the subsidiarity principle, to draft a legislative or legal proposal on whistle-blowers; calls for effective measures to protect whistle-blowers who detect and in good faith report cases of wrongdoing in the public interest, from work-

related unfair treatment, retaliation and criminal and civil liability; stresses the importance of ensuring the anonymity of whistle-blowers and the confidentiality of the process;

4. Points to the danger of whistle-blowing workers who acted in the public interest being excluded from career progression, losing their jobs or suffering retaliation by colleagues and management at their workplace, and to the dampening, threatening and long-term psychologically devastating effect this has on those who may come across wrongdoing; highlights that whistle-blowers act at high personal and professional risk and usually pay a personal and professional price for it; highlights therefore that the definition of 'whistle-blower' should be applied to as many different types of workers as possible, including current and former employees, as well as trainees, apprentices and others;
5. Recalls the importance of devising instruments to sanction and ban any form of retaliation, such as harassment, or other punitive or discriminatory treatment, including action taken against colleagues or family members as a result of the disclosure of information;
6. Stresses that whistle-blowers and their family members whose lives or safety are in jeopardy must be entitled to receive effective and adequate protection and to take action through the courts wherever necessary;
7. Stresses that whistle-blowers are an important source of information for investigative journalists, and calls on the Member States to ensure that the rights of journalists and the identity of whistle-blowers acting in good faith are protected effectively and legally in instances when allegations are proven true; stresses that when journalists are themselves the source they should also be protected and that authorities in both cases should refrain from using surveillance;
8. Considers that the burden of proof should lie with the employer who must clearly demonstrate that any measures taken against an employee were in no sense connected with a whistle-blower's disclosure;
9. Urges employers, workers' representatives and the authorities to put in place effective channels for reporting and disclosing wrongdoing, to act swiftly on the information reported to them after thorough verification, and to urgently inform all necessary and relevant parties, agencies and institutions of any illegality or wrongdoing;
10. Recalls that it is necessary to afford the necessary legal certainty and protection throughout the Union to those who report verified wrongdoing within both the public and the private sectors;
11. Recalls that any future normative framework should take into account the rules, rights and duties that govern and impact on employment; further emphasises that this should be done with the involvement of social partners and in compliance with collective bargaining agreements;
12. Recalls that after a thorough verification, and in the event of deliberately false accusations made in bad faith, those responsible should be held accountable;
13. Urges the relevant authorities to lay down a best-endeavours obligation in connection with

arrangements for receiving and dealing with reports that are put in place by both employers and the authorities themselves.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	12.7.2017
<b>Result of final vote</b>	+:               50 -:               0 0:               2
<b>Members present for the final vote</b>	Guillaume Balas, Tiziana Beghin, Brando Benifei, Enrique Calvet Chambon, David Casa, Ole Christensen, Martina Dlabajová, Lampros Fountoulis, Elena Gentile, Arne Gericke, Marian Harkin, Czesław Hoc, Danuta Jazłowiecka, Agnes Jongerius, Rina Ronja Kari, Jan Keller, Ádám Kósa, Agnieszka Kozłowska-Rajewicz, Jean Lambert, Jérôme Lavrilleux, Patrick Le Hyaric, Jeroen Lenaers, Verónica Lope Fontagné, Javi López, Thomas Mann, Dominique Martin, Anthea McIntyre, Joëlle Mélin, Elisabeth Morin-Chartier, Marek Plura, Terry Reintke, Robert Rochefort, Claude Rolin, Sven Schulze, Siôn Simon, Romana Tomc, Yana Toom, Marita Ulvskog, Renate Weber, Tatjana Ždanoka, Jana Žitňanská
<b>Substitutes present for the final vote</b>	Maria Arena, Lynn Boylan, Tania González Peñas, Marju Lauristin, Paloma López Bermejo, Anne Sander, Joachim Schuster, Csaba Sógor, Helga Stevens, Flavio Zanonato
<b>Substitutes under Rule 200(2) present for the final vote</b>	Andrejs Mamikins

**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>50</b>	<b>+</b>
ALDE	Enrique Calvet Chambon, Martina Dlabajová, Marian Harkin, Robert Rochefort, Yana Toom, Renate Weber
ECR	Arne Gericke, Czesław Hoc, Anthea McIntyre, Helga Stevens, Jana Žitňanská
EFDD	Tiziana Beghin
GUE/NGL	Lynn Boylan, Tania González Peñas, Rina Ronja Kari, Patrick Le Hyaric, Paloma López Bermejo
NI	Lampros Fountoulis
PPE	David Casa, Danuta Jazłowiecka, Agnieszka Kozłowska-Rajewicz, Ádám Kósa, Jérôme Lavrilleux, Jeroen Lenaers, Verónica Lope Fontagné, Thomas Mann, Elisabeth Morin-Chartier, Marek Plura, Claude Rolin, Anne Sander, Sven Schulze, Csaba Sógor, Romana Tomc
S&D	Maria Arena, Guillaume Balas, Brando Benifei, Ole Christensen, Elena Gentile, Agnes Jongerius, Jan Keller, Marju Lauristin, Javi López, Andrejs Mamikins, Joachim Schuster, Siôn Simon, Marita Ulvskog, Flavio Zanonato
VERTS/ALE	Jean Lambert, Terry Reintke, Tatjana Ždanoka

<b>0</b>	<b>-</b>

<b>2</b>	<b>0</b>
ENF	Dominique Martin, Joëlle Mélin

Key:

+ : for

- : against

0 : abstention

13.7.2017

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY**

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: Luke Ming Flanagan

### **SUGGESTIONS**

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Believes that the lack of adequate whistle-blower protection has a negative impact on the development and implementation of EU policy on environmental protection, public health and food safety, while fears of retaliation can engender a chilling effect in whistle-blowers, thereby endangering the public interest;
2. Takes the view that, even though the importance and value of whistle-blowing in the areas of public health, the environment and food safety is now increasingly recognised in the Member States, information and promotional campaigns on whistle-blowing are needed at national and European level in order to change attitudes and mentalities;
3. Is convinced that whistle-blowers play an indispensable role in reducing risks to public health, the environment and food safety – areas in which certain risks are hard to control externally – and in deterring and preventing wrongdoing and corruption; considers that increased whistle-blower protection will further encourage public interest disclosure of risks and threats to public health and the environment and improve food safety, promote a culture of public accountability and integrity in both public and private institutions, and even save lives; examples include the publication of the study on SARS (Severe Acute Respiratory Syndrome) and other hazardous diseases that were threatening millions of people in China, and those which helped to avoid dangers to the environment in the US;
4. Recalls recent high-impact cases such as Dieselgate, Nestle and the horsemeat scandals, in which environmental, public health or food safety risks were uncovered, and in which

either disclosures from whistle-blowers were instrumental in the detection of the risks involved, or stronger protection for whistle-blowers might have led to risks being detected earlier and more limited damage;

5. Stresses that key advances in public health, notably in tobacco control, can ultimately be traced back to the release of internal documents by whistle-blowers;
6. Draws attention to the fact that environmental, public health and food safety risks rarely stop at borders, meaning that weak or non-existent whistle-blower protection in one Member State, which may prevent such risks from being identified in a timely manner, puts the health and safety of all EU citizens, as well as their ability to protect the environment, in jeopardy;
7. Points out that wildlife trafficking has become one of the world's most profitable forms of organised crime and notes the key role played by whistle-blowers who report illegal trafficking, logging, fishing and other crimes against wildlife;
8. Stresses that evidence of violations of EU animal protection and food safety laws on farms and abattoirs relies almost exclusively on whistle-blowers, as these locations are not accessible to the general public and official controls are usually announced in advance;
9. Recognises that fishing boats are extremely isolated when in operation at sea and that strong protection for whistle-blowers is essential to enable them to provide evidence of illegal fishing and other violations of EU law;
10. Deplores the fact that regulators, including those monitoring the food chain, are under-resourced and thus dependent on whistle-blowers for information; stresses, therefore, that both increased funding for regulators and effective protection for whistle-blowers are essential;
11. Stresses that swift and robust EU legislation to protect whistle-blowers, and a political consensus that will make it possible to implement efficient measures at both national and European levels, will also help to preserve and consolidate trust in democratic institutions, to facilitate scientific expertise, to debate, to expose conflicts of interest and to demonstrate the added value of EU action for citizens; points out that whistle-blower legislation especially encourages those with scientific and technical knowledge to assert the facts which might otherwise remain hidden;
12. Deplores the significant legal gaps and weaknesses of whistle-blower protection within the Member States and the fact that too few Member States have put protections for whistle-blowers in place; insists that protection is required at EU level with a view to ensuring full legal protection for whistle-blowers that is equal in all Member States, as well as the proper and independent continuation of this process following a referral, on condition that whistle-blowers have acted in good faith and with the sole aim of protecting the general public interest;
13. Notes that some provisions to protect whistle-blowers in EU law are already in place, but that they are often limited in scope or scattered across different laws, leaving loopholes and gaps;

14. Asks for the Commission's support in encouraging Member States to create efficient and effective whistle-blower protection mechanisms;
15. Urges the Commission to take stock of the results of its public consultation, to move forward to draft legislation in the coming months and to put forward a proposal without delay for a horizontal legal instrument, in line with the subsidiarity principle, that establishes robust common minimum standards in the EU for whistle-blower protection, and that builds on the Treaty provisions regarding environmental protection, public health and consumer protection; stresses the inadequacies and failings of sectoral approaches for that purpose, such as that taken in Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure; encourages the Member States to develop legislative instruments that protect those who report breaches of conduct to public authorities; suggests that EU agencies adopt a written policy on protection from reprisals for people reporting irregularities, as well as for whistle-blowers;
16. Points out that in most cases the work of whistle-blowers is based on the principles of transparency and integrity; the protection of whistle-blowers should therefore be guaranteed by law and reinforced throughout the Union, 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;
17. Urges the Commission to monitor Member States' provisions on whistle-blowers with a view to facilitating the exchange of best practices, which will help to ensure more efficient protection for whistle-blowers at national level;
18. Stresses that the reporting or disclosure of information pertaining to risks, misconduct and crimes, as well as any attempts to conceal them, which may result in environmental damage, and health and food integrity and safety issues, including in relation to emerging technologies for which the long-term environmental and health effects are still unknown, as well as other forms of wrongdoing such as the mismanagement of public bodies, public land and property, should all fall within the scope of any EU instrument protecting whistle-blowers, irrespective of whether they amount to a breach of the law, further to a reasonable belief that the disclosure is made in the public interest; emphasises that whistle-blowers should benefit from protection instruments in these areas throughout the Union as environmental issues are by their nature transnational and as such legislation must reflect this; stresses that whistle-blower protection should be afforded across the Union irrespective of where the whistle-blower resides and of where crimes have been committed;
19. Emphasises the importance of open organisational cultures and of the existence of multiple, protected channels for voluntary reporting of information, internally and externally, in order to prevent harm to the environment, human health and the food chain, which is also in the best interests of the organisations themselves;
20. Highlights the fact that EU whistle-blower protection legislation must be comprehensive, broad in scope, fast-acting and must protect the whistle-blower, and where appropriate his or her affected colleagues and relatives, from any kind of retaliatory action, harassment, intimidation and exclusion from their place of work or private life, and from civil,



criminal or administrative procedures arising from the disclosure; underlines the fact that effective whistle-blower protection is essential to guarantee the right to free speech and freedom of information, and that conflicting norms governing matters of secrecy and confidentiality should be reviewed in line with European human rights jurisprudence, so as to ensure that such exceptions are necessary and proportionate; emphasises that protection is needed not just for internal disclosures made through designated channels within the workplace or disclosures to public authorities or oversight bodies, but – taking into account the relevant case law of the European Court of Human Rights – also external disclosures made to the general public, via the media or otherwise; points out that the EU institutions, in cooperation with all relevant national authorities, should introduce and take all necessary measures to protect the confidentiality of information sources in order to prevent any discriminatory actions or threats; calls on the Commission to ensure that all whistle-blowers, including whistle-blowers who suffer retaliation further to a public interest report or disclosure and, as a consequence, pursue a valid claim in court, have access to independent legal advice, financial and psychological support, as well as relief measures, as appropriate;

21. Calls on the Member States and the Commission to draw up a strict legal framework which will enable businesses to establish internal whistle-blower systems, properly defining the concept of a reasonable period for a reply from the undertaking, and ensuring that these systems comply with social legislation and the law protecting personal data;
22. Highlights the need for legal certainty regarding the protective provisions afforded to whistle-blowers, as a continued lack of clarity and a fragmented approach deters potential whistle-blowers from coming forward, and is detrimental to their employers, especially in the case of businesses that operate in multiple jurisdictions or sectors;
23. Stresses the important role of investigative journalism and calls on the Commission to ensure that its proposal offers the same level of protection to both investigative journalists and whistle-blowers;
24. Stresses that the definition of a whistle-blower should not be narrow or restricted to certain fields, work contract status or the legal character of the acts or information reported or disclosed, and that whistle-blowers in the public and private sectors should be afforded equal protection and not bound by any contractual obligation preventing reports or disclosures when these are in the public interest, notwithstanding any necessary restrictions such as those framed by the Global Principles on National Security and the Right to Information;
25. Encourages the Member States to develop benchmarks and indicators on whistle-blower policies in both the public and private sector;
26. Points out that EU legislation should establish a clear procedure for handling disclosures from start to finish to ensure proper follow-through on the actions taken by whistle-blowers, from report submission and processing to ensuring effective whistle-blower protection, as well as more efficient whistle-blower protection mechanisms; stresses the importance of explicitly entrusting competent authorities and regulatory and law enforcement bodies with the responsibility of maintaining reporting channels, receiving, handling and investigating suspected malpractice, while safeguarding the confidentiality of the source, where applicable, and the rights of the affected parties; encourages the

Commission and the Member States to provide access to confidential advice to persons who may be considering a public interest report or disclosure, and who will thus be seeking information such as that relating to the rights and responsibilities of whistleblowers, adequate channels, and the possible consequences of their decision.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	11.7.2017
<b>Result of final vote</b>	+: 67 -: 1 0: 0
<b>Members present for the final vote</b>	Margrete Auken, Pilar Ayuso, Zoltán Balczó, Catherine Bearder, Ivo Belet, Biljana Borzan, Lynn Boylan, Paul Brannen, Nessa Childers, Birgit Collin-Langen, Mireille D'Ornano, Miriam Dalli, Seb Dance, Angélique Delahaye, Stefan Eck, Bas Eickhout, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Gerben-Jan Gerbrandy, Arne Gericke, Jens Gieseke, Julie Girling, Françoise Grossetête, Andrzej Grzyb, Jytte Guteland, Anneli Jäätteenmäki, Jean-François Jalkh, Benedek Jávor, Kateřina Konečná, Urszula Krupa, Giovanni La Via, Jo Leinen, Peter Liese, Norbert Lins, Rupert Matthews, Valentinas Mazuronis, Susanne Melior, Miroslav Mikolášik, Gilles Pargneaux, Piernicola Pedicini, Bolesław G. Piecha, Pavel Poc, Julia Reid, Frédérique Ries, Michèle Rivasi, Daciana Octavia Sârbu, Annie Schreijer-Pierik, Davor Škrlec, Renate Sommer, Claudiu Cîprian Tănăsescu, Ivica Tolić, Estefanía Torres Martínez, Adina-Ioana Vălean, Jadwiga Wiśniewska, Damiano Zoffoli
<b>Substitutes present for the final vote</b>	Luke Ming Flanagan, Elena Gentile, Esther Herranz García, Krzysztof Hetman, Ulrike Müller, James Nicholson, Christel Schaldemose, Bart Staes, Tiemo Wölken
<b>Substitutes under Rule 200(2) present for the final vote</b>	Siôn Simon, Derek Vaughan

**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>67</b>	<b>+</b>
ALDE	Catherine Bearder, Gerben-Jan Gerbrandy, Anneli Jäätteenmäki, Valentinas Mazuronis, Ulrike Müller, Frédérique Ries
ECR	Arne Gericke, Julie Girling, Urszula Krupa, Rupert Matthews, James Nicholson, Bolesław G. Piecha, Jadwiga Wiśniewska
EFDD	Piernicola Pedicini
ENF	Mireille D'Ornano, Jean-François Jalkh
GUE/NGL	Lynn Boylan, Stefan Eck, Luke Ming Flanagan, Kateřina Konečná, Estefanía Torres Martínez
NI	Zoltán Balczó
PPE	Pilar Ayuso, Ivo Belet, Birgit Collin-Langen, Angélique Delahaye, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Jens Gieseke, Françoise Grossetête, Andrzej Grzyb, Esther Herranz García, Krzysztof Hetman, Giovanni La Via, Peter Liese, Norbert Lins, Miroslav Mikolášik, Annie Schreijer-Pierik, Renate Sommer, Ivica Tolić, Adina-Ioana Vălean
S&D	Biljana Borzan, Paul Brannen, Nessa Childers, Miriam Dalli, Seb Dance, Elena Gentile, Jytte Guteland, Jo Leinen, Susanne Melior, Gilles Pargneaux, Pavel Poc, Christel Schaldemose, Peter Simon, Daciana Octavia Sârbu, Claudiu Ciprian Tănăsescu, Derek Vaughan, Tiemo Wölken, Damiano Zoffoli
Verts/ALE	Margrete Auken, Bas Eickhout, Benedek Jávor, Michèle Rivasi, Davor Škrlec, Bart Staes

<b>1</b>	<b>-</b>
EFDD	Julia Reid

<b>0</b>	<b>0</b>

Key:

+ : for

- : against

0 : abstention

31.5.2017

## OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: Zdzisław Krasnodębski

### SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Considers that whistle-blowing is one of the most important means to detect and prevent misconduct, wrongdoing or illegal activity, in particular fraud and corruption in public administration and private companies, organised crime, tax evasion and tax avoidance; is of the opinion that whistle-blowers are essential for protecting the public interest, saving public money, and ensuring transparency and integrity in public life; notes that whistle-blowers have disclosed scandals affecting several Member States, and underlines the fact that whistle-blowers are an essential pillar of the EU strategy against corruption and for ensuring that companies and governments are called to account;
2. Is of the opinion that cultural differences do not detract from the need for legal protection for whistle-blowers in Member States;
3. Stresses that negative perceptions of the act of whistle-blowing and of whistle-blowers slow progress in passing/enforcing whistle-blower laws in many countries, but also weaken citizens' willingness to report irregularities even when legal protection mechanisms are already in place;
4. Is of the opinion that the protection of whistle-blowers is essential for freedom of expression, plurality of opinions, democracy and freedom;
5. Stresses that legal protection of whistle-blowers is required in the European Union; reaffirms that the rule of law is beneficial for a culture of freedom of expression;

6. Reaffirms that the implementation of legal instruments providing a safe environment for whistle-blowers encourages a speak-up culture and helps EU citizens to exercise their right to act against wrongdoing; notes that whistle-blowing should be promoted as a civic engagement and an act of good citizenship and should be supported by effective awareness-raising, communication, learning, educational and training efforts, while ensuring that sufficient safeguards are in place for the protection of commercially sensitive company information such as trade secrets;
7. Encourages Member States to be proactive in promoting an open culture within the workplace, whether public or private, which enables organisations to operate to high ethical standards and gives employees the confidence to speak up, and therefore enables action to be taken to prevent or remedy any threats or harm;
8. Encourages Member States to evaluate regularly the effectiveness of the measures they implement, taking account of public opinion on attitudes towards the act of whistle-blowing and whistle-blowers, cross-sectoral surveys of senior managers responsible for receiving and handling reports, and independent research studies on whistle-blowing across workplaces;
9. Reaffirms the need for public institutions and private organisations to establish, in close cooperation with all staff representatives, including workers where possible, internal whistle-blowing policies for their employees, including trainees and apprentices, setting out clear and confidential routes for making disclosures, including external disclosures, informing them of their right to protection against reprisals when reporting misconduct, and providing, where appropriate, confidential legal advice and relevant courses and training sessions; insists that these policies shall not replace legislation on whistle-blower protection;
10. Notes that, owing to inadequate legal safeguards and significant gaps in the protection of whistle-blowers against retaliation, intimidation and isolation, the obligation to use internal reporting channels can be risky and can have a deterrent effect, restricting both freedom of expression and the public's right to access information; stresses that internal reporting procedures must not be used as a tool for prohibiting the act of informing the wider public of illegal activities and activities that severely harm the public interest; stresses that this must apply equally to the use of external whistle-blowing procedures and that accordingly, as laid down in Article 5 of ILO Convention 158 of 22 June 1982, the filing of a complaint, participation in proceedings against an employer or provision of information to a competent authority do not constitute valid reasons for termination of employment;
11. Notes that protected disclosures concerning harm or threats to the public interest that have occurred, are occurring at the time of the disclosure, or are likely to occur, can be made internally within the workplace or externally, as alternatives or cumulatively, to the competent authorities or to parliamentarians and oversight agencies, as well as to trade unions and employers' associations, or to the public through the media, including social media, or non-governmental organisations;
12. Recalls that whistle-blowing is linked to freedom of the press and is essential in bringing to light illegal activities or activities which harm the public interest; stresses that whistle-blowers are an important source of information for investigative journalism, and calls on

Member States to ensure that the right of journalists not to reveal a source's identity, including in cases where journalists are themselves the source of information, is effectively and legally protected, and that authorities should refrain from using surveillance to ascertain their sources; observes in this context that the European Court of Human Rights has held, in its case law, that protection of journalists' sources is not a privilege but a vital component of a free press<sup>1</sup>;

13. Is of the opinion that the EU institutions should serve as a role model with regard to whistle-blowing policy; expresses concern that many of the EU agencies have still not implemented the 2012 guidelines on whistle-blowing and that findings from a 2015 survey showed low awareness of the rules among Commission staff; calls on the Commission and the EU agencies to ensure that the guidelines are implemented in the agencies and that staff in the EU institutions and bodies are sufficiently familiar with them; encourages the Commission to insert a standard clause in contracts and grant agreements requiring beneficiaries and persons working for those beneficiaries to report serious irregularities to OLAF;
14. Calls on the EU institutions, in cooperation with all relevant national authorities, to introduce and take all necessary measures to protect the anonymity and confidentiality of their information sources in order to prevent any discriminatory action or threats;
15. Encourages those Member States that have not yet adopted legislation on whistle-blowing to do so in the near future, and calls on the Commission to consider creating a platform for exchanging best practices in this area between Member States, but also with third countries.

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<sup>1</sup> European Court of Human Rights, judgment of 27.11.2007, 20477/05, Tillack v Belgium.

## **ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR FOR THE OPINION HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur for the opinion. The rapporteur has received input from the following entities or persons in the preparation of opinion Legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies PE601.025 – 2016/2224(INI) (Rapporteur: Zdzisław Krasnodębski).

<b>Entity and/or person</b>
OLAF, European Commission
Investigation and Disciplinary Office of the Commission, DG HR, European Commission
Agencies, European Schools & International Affairs, DG HR, European Commission
Permanent Representation of Poland to the European Union
Transparency International
Journalismfund.eu
Public Integrity Program, Stefan Batory Foundation (Fundacja Batorego)
Institute of Public Affairs (Instytut Spraw Publicznych)
Sobieski Institute (Instytut Sobieskiego)
Forum of Trade Unions (Forum Związków Zawodowych)
Ethics Line (Linia Etyki)



## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	30.5.2017
<b>Result of final vote</b>	+: 15 -: 9 0: 2
<b>Members present for the final vote</b>	Andrea Bocskor, Nikolaos Chountis, Silvia Costa, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Luigi Morgano, Momchil Nekov, John Procter, Michaela Šojdrová, Helga Trüpel, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
<b>Substitutes present for the final vote</b>	Santiago Fisas Aixelà, Dietmar Köster, Zdzisław Krasnodębski, Morten Løkkegaard, Martina Michels, Remo Sernagiotto
<b>Substitutes under Rule 200(2) present for the final vote</b>	Josep-Maria Terricabras, Kazimierz Michał Ujazdowski

**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>15</b>	<b>+</b>
ALDE	María Teresa Giménez Barbat, Morten Løkkegaard
ECR	Zdzisław Krasnodębski, John Procter, Remo Sernagiotto, Kazimierz Michał Ujazdowski
PPE	Andrea Bocskor, Santiago Fisas Ayxelà, Svetoslav Hristov Malinov, Michaela Šojdrová, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver

<b>9</b>	<b>-</b>
S&D	Silvia Costa, Giorgos Grammatikakis, Petra Kammerevert, Dietmar Köster, Krystyna Łybacka, Luigi Morgano, Momchil Nekov
VERTS/ALE	Josep-Maria Terricabras, Helga Trüpel

<b>2</b>	<b>0</b>
GUE/NGL	Nikolaos Chountis, Martina Michels

Key:

+ : for

- : against

0 : abstention

8.9.2017

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: Maite Pagazaurtundúa Ruiz

### **SUGGESTIONS**

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the Commission stated in its communication of 5 July 2016 that the protection of whistle-blowers, in both the public and private sectors, helps to address mismanagement and irregularities, including cross-border corruption, transnational tax evasion and unfair trading practices, all of which occur mainly due to legislative gaps between Member States' legislation;
- B. whereas whistle-blowing represents a fundamental source of information in the fight against organised crime, in the investigation of cases of corruption within the public and private sectors, and in the detection of tax avoidance schemes set up by companies, and whereas the protection of whistle-blowers is therefore essential to promote a culture of public accountability and integrity and to safeguard the public good and the financial interests of the European Union; whereas whistle-blowers who act in the public interest in order to expose misconduct, wrongdoing, fraud or illegal activity do not feel truly protected and often take a very high personal risk, as they may be dismissed, sued, boycotted, arrested, threatened or victimised and discriminated in a variety of other ways;
- C. whereas the Union is founded on the values of democracy, the rule of law and respect for human rights, which are enshrined in Article 2 of the TEU;
- D. whereas safeguarding the confidentiality of whistle-blowers' identities and of the information they disclose contributes to the creation of more effective channels for reporting fraud, corruption, wrongdoing, misconduct and other serious infringements, and

whereas, given the sensitivity of the information, mismanagement of confidentiality may lead to undesired information leaks and a violation of the public interest within the Union; whereas, in the public sector, protecting whistle-blowers can make it easier to detect the misuse of public funds, fraud and other forms of cross-border corruption linked to national or EU interests;

- E. whereas reporting by whistle-blowers of information that could threaten or harm the public interest is done on the basis of their freedom of expression and information, both rights enshrined in the EU Charter of Fundamental Rights, in particular Article 11 thereof, and with a strong sense of responsibility and civic morality;
- F. whereas in its resolutions of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken; of 25 November 2015 on tax rulings and other measures similar in nature or effect; of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies; and of 14 February 2017 on the role of whistle-blowers in the protection of the EU's financial interests, Parliament called on the Commission to submit a legislative proposal establishing an effective and comprehensive European whistle-blower protection programme protecting those who report suspected fraud or illegal activity affecting the public interest or the financial interests of the European Union;
- G. whereas differences in the treatment and protection of whistle-blowers between Member States may discourage them from disclosing information, in particular information that is of relevance in several Member States, and whereas the protection of whistle-blowers cannot be achieved via legal measures alone, but must also be pursued through fostering a cultural change in European societies in how whistle-blowing is perceived, particularly in connection with fundamental rights;
- H. whereas the protection of whistle-blowers in the European Union should not be limited to European cases alone, but should also apply to international cases;
  - 1. Stresses that in democratic and open states founded on the rule of law, citizens have a right to know about violations of their fundamental rights and to denounce them, including those involving their own government;
  - 2. Recognises that whistle-blowing plays a crucial role in the fight against fraud, tax fraud, tax evasion, mismanagement, misconduct, wrongdoing, activities that harm the public interest or criminal or illegal activities; notes that through the recent cases of whistle-blowing it has become evident that whistle-blowers play a crucial role in unveiling serious violations of fundamental rights and in protecting the public interest and maintaining accountability and integrity in both the public and private sectors; points out that protection of whistle-blowers should not be limited only to cases of illegal activities, but should extend to all cases of disclosure of misconduct or wrongdoing; points out that the existing legislation on protection of whistle-blowers is scattered and that protection of whistle-blowers across the Member States is uneven, which could impact EU policies negatively;
  - 3. Calls for a common and broad definition of whistle-blowing and whistle-blowers in order to ensure legal protection for all whistle-blowers, including those who disclose information with a reasonable belief that the information is true at the time it is disclosed

and make inaccurate disclosures in honest error;

4. Emphasises that persons who knowingly report wrong or misleading information to competent authorities should not be considered as whistle-blowers and thus should not enjoy the protection mechanisms;
5. Stresses that protection against further conviction for defamation or breach of professional secrecy must be ensured;
6. Stresses that protection of whistle-blowers should be harmonised at EU level; is of the opinion that a horizontal EU legal instrument providing protection for investigative journalists and whistle-blowers in the public and private sectors and complemented by sectoral rules would be the most efficient approach in order to ensure comprehensive and genuine protection of whistle-blowers; reiterates in this regard its call on the Commission to present by the end of 2017 a legislative proposal establishing an effective and comprehensive European whistle-blower protection programme, in line with the principles of proportionality and subsidiarity; this proposal should include mechanisms for companies, public bodies and non-profit organisations;
7. Underlines that the EU institutions must be interested and show strong willingness to support the role of whistle-blowers and the benefits they bring in correcting wrongdoing; recalls the lack of follow-up and proper settlement regarding whistle-blowing cases at this level; considers it a matter of urgency that, before a directive on the protection of whistle-blowers is adopted, the Commission Guidelines on the protection of whistle-blowers within the EU institutions be properly implemented, and urges all institutions, including their agencies, to establish clear rules for the protection of whistle-blowers, as well as measures against 'revolving door' practices;
8. Recognises that any person who passes on information to a relevant authority or who discloses an infringement in another appropriate way must have the right to legal protection;
9. Urges the European Court of Auditors and the Office of the European Ombudsman to publish, each by the end of 2017: 1) special reports containing statistics and a clear track record of whistle-blowing cases identified in the European institutions, businesses, associations, organisations and other bodies registered in the Union; 2) the follow-up by the institutions concerned in relation to the cases revealed, on the basis of the current Commission guidelines and rules; (3) the outcome of each investigation opened as a result of the information received from whistle-blowers; (4) the measures envisaged in every case for the whistle-blowers' protection;
10. Expresses its concern at the vulnerability of whistle-blowers to retaliation in their personal and professional lives, and at the possibility of criminal and civil judicial proceedings against whistle-blowers; calls for the horizontal legal framework to include definitions, protection against different forms of reprisals, and exemptions from criminal and civil proceedings, according to criteria to be established; stresses that whistle-blowers should be able to report information confidentially or anonymously in order to have their identity kept secret and to have the possibility, wherever it fits with the national legal system, to file for interim or injunctive relief in order to prevent dismissal until the outcome of the whistle-blowing case has been established; strongly believes that this will increase

citizens' trust in the Union and national bodies;

11. Emphasises that no employment relationship should restrict someone's right of freedom of expression and that no one should be discriminated against in the event of exercising that right;
12. Emphasises that the protection of whistle-blowers also applies if the expressed suspicion is in the end not confirmed, provided the person acted in good faith;
13. Calls for the creation of legal, confidential, secure, safe and accessible disclosure channels at national and European level to facilitate reporting to the competent authorities of information on threats to the public interest; reiterates in this regard its call for an independent information-gathering, advisory and referral EU body, with offices in Member States; highlights in this regard the potential role of the Office of the European Ombudsman; emphasises that whistle-blowers should be free to report both internally, within the workplace, and externally to competent authorities; underlines that whistle-blowers who were initially anonymous should be granted protection in cases where they decide to give up anonymity and require such protection;
14. Stresses that the authorities managing these channels should investigate claims professionally and also provide whistle-blowers with detailed information about their rights and responsibilities, support them against any retaliatory measures directed towards them or their families and ensure access to independent legal aid, with financial support when necessary, in addition to any psychological support and treatment needed, and explore compensation claims for any harassment suffered or the loss of their current or future livelihood, if the damage occurred in retaliation for a protected disclosure;
15. Stresses that, in accordance with Articles 22a, 22b and 22c of the Staff Regulations, all EU institutions should have in place robust and comprehensive internal rules on whistle-blower protection;
16. Calls on the Commission to fully take into account stakeholders' views on the subject collected during the public consultation which took place in May 2017;
17. Stresses that whistle-blowers are an important source of information for investigative journalism; highlights the important role of the media in unveiling illegalities or misconduct, notably when these infringe on the fundamental rights of citizens; calls on the Member States to ensure that the right of journalists not to reveal a source's identity is effectively and legally protected; stresses that journalists, where they themselves are the source, should be protected and that the authorities in both cases should refrain from using surveillance; recalls in this regard that Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure should not be interpreted in a way that reduces protection of whistle-blowers and investigative journalism; stresses that investigative journalists are an exposed group of professionals, often paying the price of their jobs, freedom or lives to make disclosures of massive irregularities, and calls for the inclusion of special measures to protect investigative journalists in a horizontal EU legal instrument for the protection of whistle-blowers;
18. Stresses that investigations into the issues raised by whistle-blowers should be conducted

independently and within the shortest time frame possible, protecting also the rights of individuals that might be implicated by a disclosure; underlines that both the whistle-blower and any person implicated by a disclosure should be able to provide additional arguments and evidence throughout the investigation, and they should be kept informed of the handling of the disclosure;

19. Calls for the establishment of an independent advisory and referral unit within the Office of the European Ombudsman in a position to receive reports, complaints, gather information and adequately advise on the protection of whistle-blowers;
20. Calls for the EU institutions, in cooperation with all relevant national authorities, to introduce and take all necessary measures to protect the anonymity and confidentiality of information sources in order to prevent any discriminatory actions or threats;
21. Emphasises that non-governmental organisations are not exempt from attempts of maladministration, fraud, misuse of funds and other irregularities, and considers that rules for whistle-blowers in the public and private sectors should apply also to NGOs;
22. States that a clear solution for whistle-blowers working in EU-registered companies but based outside the EU is needed;
23. Calls for the EU institutions to award a European whistle-blower prize to encourage a change in the perception of whistle-blowing and its connection to fundamental rights and to establish whistle-blowing as an act of good citizenship;
24. Emphasises that the right of citizens to report wrongdoing is a natural extension of the right of freedom of expression and information as enshrined in Article 11 of the Charter of Fundamental Rights, and that it is essential to ensure the principles of transparency and integrity and the protection of the public interest;
25. Stresses the need for the Member States to comply with the Council of Europe Recommendation on the Protection of Whistleblowers.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	7.9.2017
<b>Result of final vote</b>	+: 32 -: 5 0: 12
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Martina Anderson, Monika Beňová, Caterina Chinnici, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Raymond Finch, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Jussi Halla-aho, Monika Hohlmeier, Filiz Hysmenova, Sophia in 't Veld, Eva Joly, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, Péter Niedermüller, Soraya Post, Judith Sargentini, Birgit Sippel, Branislav Škripek, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Auke Zijlstra
<b>Substitutes present for the final vote</b>	Andrea Bocskor, Pál Csáky, Dennis de Jong, Gérard Deprez, Andrejs Mamikins, Nuno Melo, Maite Pagazaurtundúa Ruiz, Christine Revault d'Allonnes Bonnefoy, Elissavet Vozemberg-Vrionidi
<b>Substitutes under Rule 200(2) present for the final vote</b>	Salvatore Cicu, André Elissen, Krzysztof Hetman, Elisabeth Köstinger



**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>32</b>	<b>+</b>
ALDE	Gérard Deprez, Nathalie Griesbeck, Filiz Hyusmenova, Sophia in 't Veld, Maite Pagazaurtundúa Ruiz
ECR	Jussi Halla-aho, Helga Stevens, Branislav Škripek
GUE/NGL	Martina Anderson, Cornelia Ernst, Dennis de Jong, Marie-Christine Vergiat
NI	Udo Voigt
PPE	Elisabeth Köstinger
S&D	Monika Beňová, Caterina Chinnici, Ana Gomes, Sylvie Guillaume, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Andrejs Mamikins, Claude Moraes, Péter Niedermüller, Soraya Post, Christine Revault D'Allonnes Bonnefoy, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
Verts/ALE	Jan Philipp Albrecht, Eva Joly, Judith Sargentini, Bodil Valero

<b>5</b>	<b>-</b>
EFDD	Raymond Finch
ENF	André Elissen, Auke Zijlstra
PPE	Frank Engel, Traian Ungureanu

<b>12</b>	<b>0</b>
EFDD	Kristina Winberg
PPE	Andrea Bocskor, Salvatore Cicu, Pál Csáky, Rachida Dati, Agustín Díaz de Mera García Consuegra, Krzysztof Hetman, Monika Hohlmeier, Barbara Kudrycka, Nuno Melo, Roberta Metsola, Elissavet Vozemberg-Vrionidi

Key:

+ : for

- : against

0 : abstention

11.9.2017

## **OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS**

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: Fabio Massimo Castaldo

### **SUGGESTIONS**

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas respect for democracy, the rule of law and fundamental rights is a key founding value of the EU, as set out in Article 2 of the Treaty on European Union (TEU) and the EU Charter of Fundamental Rights, and whereas freedom of expression and the right to good administration are explicitly safeguarded under Articles 11 and 41 respectively of the Charter;
- B. whereas since 1 January 2014, all EU institutions have been required to introduce internal rules protecting whistle-blowers who are EU officials, in accordance with Articles 22(a), 22(b) and 22(c) of the Staff Regulations;
- C. whereas whistle-blowers provide a fundamental service to the whole community, play a very important and valuable role in safeguarding democracy and the general interest, have made a fundamental contribution in cases such as the LuxLeaks, SwissLeaks, WikiLeaks and Panama Papers revelations, and constitute an essential source of information in the fight against crime, corruption and other infringements in the public and private sectors, as recognised repeatedly by Parliament and by international organisations such as the Council of Europe, the Organisation for Economic Cooperation and Development (OECD) and the UN; whereas all these organisations have expressed the need to protect whistle-blowers; whereas the effective protection of whistle-blowers would also contribute to the efficiency of the internal market, reinforce citizens' trust in the EU and contribute decisively to a culture of public accountability and integrity in public and private institutions;
- D. whereas at present, whistle-blowers very often experience negative consequences and

retaliation as a result of their disclosure, fall victim to social exclusion and stigmatisation, together with their families, and frequently lose their jobs; whereas according to the OECD, more than one third of organisations with reporting mechanisms do not have or know of any written policy on protecting those who report from reprisals; whereas in many jurisdictions, and particularly in the private sector, employees are sworn to confidentiality with respect to certain information, with the result that whistle-blowers may be subject to disciplinary action for reporting outside their organisation;

- E. whereas current EU whistle-blower protection is largely inadequate, sectoral and inconsistent among Member States, and is in some cases lacking entirely, and this has negative consequences for EU policy and the Union's financial interests, among other spheres; whereas EU law, which sets out specific rules on national security, counter-terrorism and the fight against organised crime, already contains certain provisions protecting whistle-blowers against reprisals, but does not yet provide for horizontal legislation applying to all public and private bodies, which means that it often proves inefficient and the result is discrimination and the emergence of loopholes; notes that most EU Member States have ratified the UN Convention against Corruption, which makes providing appropriate and effective protection to whistle-blowers obligatory;
- F. whereas the protection of whistle-blowers should be guaranteed by law and reinforced throughout the EU, provided that 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;
- G. 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 whistle-blowers;
  - 1. Notes that only a few Member States have introduced sufficiently advanced whistle-blower protection systems; calls on those Member States which have not yet incorporated the whistle-blower protection principles into national law to do so as soon as possible;
  - 2. Stresses that both whistle-blowers and the private or public body or institution involved should ensure the legal protection of the rights enshrined in the EU Charter of Fundamental Rights and national legal provisions;
  - 3. Takes the view that, given the central role of whistle-blowers acting in the public interest, it is imperative that people who disclose information (confidential or otherwise) concerning alleged irregularities, wrongdoing or threats to the public interest are afforded proper protection of their physical and moral integrity, livelihoods and career, by safeguarding them against retaliation, including administrative, civil and criminal proceedings, and granting them access to judicial assistance and psychological support, as appropriate; emphasises the fact that when the whistle-blower is an employee of the organisation concerned or is liable to suffer damage as a result of the actions of the denounced party, these protective measures must be stricter, as whistle-blowers may find themselves in a weak and difficult position, which may necessitate additional financial and legal instruments; believes that the burden of proof should be reversed so that it is the employer who must establish that any changes or reprisals are unrelated to the protected disclosure;

4. Calls on the Commission and the Member States to grant whistle-blowers the highest possible level of confidentiality, including in the digital environment, and to grant them access to a standard procedure, while guaranteeing their right to report directly through external channels in cases of serious wrongdoing, or in cases in which internal channels are either ineffective or counter-productive;
5. Calls on the Commission to study the best practices employed in protecting whistle-blowers around the world and, on that basis, to take a holistic approach to the swift introduction, in accordance with the principle of subsidiarity, of a legislative proposal for a common regulatory framework that guarantees a high level of protection across the board in both public and private sectors, while ensuring that Member States are free to legislate for stronger protection; reiterates its call for the submission of horizontal proposals by the end of 2017; calls on the Commission to consider the model of whistle-blower protection whereby public authorities are not allowed to try to discover the identities of whistle-blowers;
6. Recalls that the Treaties establish several legal bases that should be explored to enable the Union to act in this field, such as Article 114 TFEU on the approximation of national legislation regarding the functioning of the internal market and Article 153(2)(b) on the protection of working conditions, with a view to introducing a comprehensive and horizontal directive on harmonised minimum conditions for the protection of whistle-blowers;
7. Stresses that the common regulatory framework should include a broad and clear legal definition of ‘whistle-blower’, covering a broad scope of working relationships and the disclosure of information on an unlawful or wrongful act, or one which undermines the public interest, and that it should also identify tools for safeguarding protection against unjustified legal prosecution and retaliation, and incentives to encourage whistle-blowers to contribute to exposing wrongdoing; insists that this protection should not be extended to those acting against the general interest, for example by disclosing information for reasons of exclusive personal gain, espionage, false flag operations, hybrid warfare, subversion or any form of organised criminality; notes, however, that this protection must also be secured for the person accused of such alleged irregularities, whether in the private or public sector, including, for example, the protection of procedural rights against libel and slander; stresses that whistle-blowers’ reports should be investigated quickly and seriously and that both the whistle-blower and any person implicated by a disclosure should be able to put forward additional arguments and evidence throughout the investigation;
8. Recalls that in the meantime, current EU law must be applied properly by both the EU institutions and the Member States, and that it should be interpreted in such a way as to offer whistle-blowers acting in the public interest the best possible protection; stresses that whistle-blower protection has already been recognised as an important mechanism for ensuring the effective application of EU legislation; calls, therefore, on the Member States to refrain from criminalising the actions of whistle-blowers who disclose information in the public interest;
9. Calls on all the EU institutions and bodies to set an example by carrying out comprehensive and effective follow-up work on the Ombudsman’s own-initiative report

of 24 July 2014, building on Article 22 of the Staff Regulations, which provides for internal measures to protect whistle-blowers when acting in the public interest;

10. Calls on the Member States to establish transparent and clear channels for information disclosure, with clear and safe reporting protocols guaranteeing confidentiality, to set up independent national authorities to protect whistle-blowers acting in the public interest, and to consider providing those authorities with specific support funds; believes that the establishment of an independent body could help Member States to coordinate their action and would be particularly useful in managing cross-border cases;
11. Encourages the Member States and the EU institutions to promote a culture of acknowledgement of the important role played by whistle-blowers in society, including through awareness-raising campaigns; calls on the Commission, in particular, to come up with a comprehensive plan on this issue; considers it necessary to foster an ethical culture in the public sector and in workplaces, so as to highlight the importance of awareness-raising among employees of existing legal frameworks regarding whistle-blowing, in cooperation with trade union organisations;
12. Calls on the Commission to hold a public consultation to seek the views of stakeholders on reporting mechanisms and examine the potential shortcomings of procedures at national level; maintains that the results of the public consultation will constitute valuable input for the Commission with a view to a possible proposal on the protection of whistle-blowers in the future.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	11.9.2017
<b>Result of final vote</b>	+: 15 -: 0 0: 7
<b>Members present for the final vote</b>	Mercedes Bresso, Fabio Massimo Castaldo, Esteban González Pons, Danuta Maria Hübner, Diane James, Ramón Jáuregui Atondo, Alain Lamassoure, Jo Leinen, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, Helmut Scholz, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Kazimierz Michał Ujazdowski
<b>Substitutes present for the final vote</b>	Martina Anderson, Max Andersson, Gerolf Annemans, Sven Giegold, Jérôme Lavrilleux, Mairead McGuinness, Jasenko Selimovic, Rainer Wieland

**FINAL VOTE BY ROLL CALL**  
**IN COMMITTEE ASKED FOR OPINION**

<b>15</b>	<b>+</b>
ALDE	Maite Pagazaurtundúa Ruiz, Jasenko Selimovic
ECR	Kazimierz Michał Ujazdowski
EFDD	Fabio Massimo Castaldo
GUE/NGL	Helmut Scholz, Barbara Spinelli
NI	Diane James
PPE	Alain Lamassoure, Paulo Rangel, Rainer Wieland
S&D	Mercedes Bresso, Ramón Jáuregui Atondo, Pedro Silva Pereira
VERTS/ALE	Max Andersson, Sven Giegold

<b>0</b>	<b>-</b>

<b>7</b>	<b>0</b>
ENF	Gerolf Annemans
PPE	Esteban González Pons, Danuta Maria Hübner, Jérôme Lavrilleux, Markus Pieper, György Schöpflin
S&D	Jo Leinen

Key:

+ : for

- : against

0 : abstention





## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	2.10.2017
<b>Result of final vote</b>	+: 17 -: 1 0: 5
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Rosa Estaràs Ferragut, Laura Ferrara, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Pascal Durand, Angel Dzhambazki, Jens Rohde, Virginie Rozière, Tiemo Wölken
<b>Substitutes under Rule 200(2) present for the final vote</b>	Kateřina Konečná, Jens Nilsson

**FINAL VOTE BY ROLL CALL  
IN COMMITTEE RESPONSIBLE**

<b>17</b>	<b>+</b>
ALDE	Jean-Marie Cavada, Jens Rohde
EFDD	Joëlle Bergeron, Laura Ferrara
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Katerina Konecná, Jiri Mastálka
PPE	Tadeusz Zwiefka
S&D	Mary Honeyball, Sylvia-Yvonne Kaufmann, Jens Nilsson, Evelyn Regner, Virginie Rozière, Tiemo Wölken
VERTS/ALE	Durand Pascal, Julia Reda

<b>1</b>	<b>-</b>
ECR	Angel Dzhambazki

<b>5</b>	<b>0</b>
PPE	Rosa Estaràs Ferragut, Emil Radev, Pavel Svoboda, József Szájer, Axel Voss

Key:

+ : for

- : against

0 : abstention