

The European Commission Proposed a New Directive on Whistleblowers' Protection

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On April 23, 2018, the European Commission introduced a proposal for a Directive to strengthen the protection of whistleblowers reporting breaches of European Union law.

This proposition is premised on the assessment of **an insufficient and uneven protection of whistleblowers** in the European Union. Indeed, the only protection in the EU system was the trade secrets Directive, which exempts whistleblowers from liability for reporting misconduct or illegal activity, even if it involves the disclosure of trade secret. But the EU legislation did not protect whistleblowers against **retaliation**, and most Member States still do not provide a protection to whistleblowers in their national system.

The European Commission pointed out that recent scandals such as the Panama Papers or Luxleaks have shown that *"whistleblowers can play an important role in uncovering unlawful activities that damage the public interest and the welfare of our citizens and society"*. However, in 2017, 81% of Europeans indicated that they did not report corruption that they experienced or witnessed.

Therefore, the proposed Directive aims to set new EU-wide standards guaranteeing protection for whistleblowers.

This new protection will apply to **every person** – employees, as well as self-employed workers, contractors, unpaid trainees and even job applicants – **who reports, in good faith, breaches of EU rules** in the areas of public procurement ; financial services, prevention of money laundering and terrorist financing ; product safety ; transport safety ; protection of the environment ; nuclear safety ; food and feed safety; animal health and welfare ; public health ; consumer protection ; protection of privacy and personal data; and security of network and information systems. It also will apply to breaches of EU competition rules, violations and abuse of corporate tax rules and damage to the EU's financial interests.

Member States will have to set out a **three tier reporting system** ensuring confidentiality and including:

- internal reporting channels ;
- reporting to competent authorities if internal channels do not work or could reasonably be expected to work ; and
- public reporting, if no appropriate action is taken after reporting through other channels or in case of imminent or clear danger to the public interest or irreversible damage.

Under the proposal, all companies with more than 50 employees or with an annual turnover of over €10 million and all state and regional administrations and municipalities with over 10.000 inhabitants will have to establish **internal reporting channels and procedures for receiving, following-up and giving feedback on reports** in a **reasonable timeframe**, not to exceed three months.

Smaller companies are exempted from such obligations, with the exception of the ones operating in the field of financial services or vulnerable anti-money laundering or counter terrorist financing.

Finally, the proposed directive sets out minimum standards on the protection of reporting persons, forbidding any **dismissal, demotion and other forms of retaliation** against a whistleblower who has followed the relevant procedures.

The new directive is likely to be finalized at the end of 2019 and Member States shall bring into force laws to comply with this Directive by May 15, 2021.

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