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European Parliament pushes for strong protection for whistleblowers in landmark vote

Today, the European Parliament took a clear position in favour of strong whistleblower protection, making several essential improvements to the European Commission's draft legal proposal presented earlier this year. The report, supported by an overwhelming majority in the legal affairs committee, will be the Parliament's negotiating position when it debates with the Council and Commission on the final text. The aim is to agree on a final Directive which would protect whistleblowers across the entire EU before the European elections next May.

Great news for whistleblowers:

1. Strong protections against retaliation

It is forbidden to retaliate against a whistleblower, whether in the workplace or outside it. There are sanctions in place for people who try to prevent whistleblowers from speaking out, and also for people who take vexatious proceedings - for example in the courts - against whistleblowers. Plus, the person taking the action against the whistleblower is the one that has to prove that it was not a direct consequence of the report.

In addition, judges will be able to dismiss cases against whistleblowers, for example, on defamation, copyright, professional secrecy or compensation requests from third parties. Whistleblowers can also apply for remedial measures against retaliation and for interim relief until the case is settled.

In the vote today, the Parliament also added the obligation on Member States to put in place measures so that whistleblowers who suffer are able to make a claim for loss of current or future income as well as for other damages.

The Parliament also improved the situation for whistleblowers by removing the Commission's chilling language regarding sanctions for "malicious or abusive" disclosures and turned it into something far more objective so that there are only sanctions for people who make "knowingly false" disclosures.

2. More freedom to report

The good news for whistleblowers is that the Commission's strict "three step" system which obliged people

to report first to their bosses unless they fulfilled one of the exceptions, is gone. People who have something to report will be able to turn directly to competent authorities or regulators if they are not comfortable reporting internally.

The restrictions put on public reporting, for example through the media, have also been softened, so that the Commission's strict exceptions for justifying public reporting has become a non-exhaustive list of examples, and the burden on the whistleblower is much lighter than it was before (whistleblowers only need to have a 'reasonable belief' that it made sense to go public).

3. Reporting anonymously is allowed

Anonymous reports must be followed up on if made internally and also competent authorities cannot ignore them, as long as national law permits. If someone reported anonymously but later their identity is revealed, they will still be protected like any other whistleblower.

Good news for journalists

There was a surprise victory today for those of us who wanted to make sure that journalists who decide to report on information from whistleblowers would not suffer as a result (for example, Edouard Perrin who reported on luxleaks was also put on trial in Luxembourg). In the end, there was a majority for ensuring journalists are protected, like whistleblowers, when they publish important news!

Protections for colleagues or individuals working for NGOs

While we wanted to fully protect NGOs working with whistleblowers, there was no majority for this and we managed to protect only individuals working for NGOs. Colleagues that help a whistleblower through the reporting process would also be protected just like the whistleblower.

A victory for workers' rights

If whistleblowers report on violations of EU law when it comes to the workers' health and safety, working conditions, worker's rights to information and consultation and also the right to equality between men and women in the workplace, they will now also be protected.

The Commission's proposal included many important areas already such as financial interests of the Union, 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 information systems, corporate tax breaches. However, there was an exhaustive list of EU legislation that whistleblowers would be protected for reporting on (in an annex), and with today's vote, the Parliament has turned this into a non-exhaustive list, opening up the possibilities for reporting and reducing confusion.

Trade Unions and other worker representatives can also accompany and support whistleblowers during the reporting process.

What about Trade Secrets?

Well, if a person blows the whistle, even if they reveal a trade secret they will be protected, if they fulfill the conditions of the whistleblower protection directive.

Bad news for NGOs

However, as briefly mentioned above, NGOs as such are not covered by the protection of the Directive. What's worse, they were pretty much completely removed from the text. For example, there was an article in the Commission's original proposal that mentioned NGOs as a possible independent party that could receive reports or assist whistleblowers, but this created controversy and in the end it was completely removed. The hope is that by not regulating it specifically, nothing would change on the ground, but we find this the most disappointing development of today's vote.

Next Steps

Now that the Parliament is ready to enter into negotiations, we are only waiting for the Council of the EU (composed of all EU governments) to come up with their common position so that the three institutions can begin the "trilogue" negotiations. The Council is trying to reach a common agreement by the end of the year, and so the negotiations would begin under the Romanian Presidency as of January next year. We hope that the EU governments will be ambitious in the level of protection they want to give to whistleblowers.

With the deadline of the European elections looming, there would need to be a final agreement as early as February so that the Parliament plenary could adopt the Directive by March or April 2019.

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