

Summary of the draft directive for the protection of whistle-blowers across Europe: A Greens/EFA Transparency and Democracy initiative

Whistleblowing is one the most effective ways of preventing or uncovering wrongdoing or threats to the public interest and the internal market, as demonstrated by recent scandals uncovered by whistle-blowers including illegal mass surveillance, industrial scale tax avoidance or the sexual abuse of children by peacekeepers. Recent mass leaks such as the Panama Papers have once again highlighted just how important whistle-blowers are for allowing in-depth journalistic investigations; but the EU's recent trade secrets directive threatens to undermine future disclosures of this kind by treating almost any secretive business information as a trade secret. This is why the Greens/EFA group in the European Parliament believes that it is now more urgent than ever to enact an EU legal framework that would set out common minimum standards for the protection of whistle-blowers throughout the European Union.

Over the past decade, the European Parliament has consistently been calling on the European Commission to propose EU legislation on the subject. Most recently, the European Parliament's special TAXE committee called on the Commission to present whistle-blower legislation by June 2016. However, the European Commission has yet to respond to these calls. In the absence of any proposals from the Commission, the draft directive on whistle-blower protection commissioned by the Greens/EFA group aims to provide further impetus for such a proposal.

Where whistle-blower protection exists in the EU, provisions tend to be scattered across different laws, with some Member States having regulated some level of protection in anti-corruption laws, others in public service laws, and again others in labour, criminal and sector-specific laws, thus leaving significant legal loopholes and gaps. As a consequence, whistle-blowers across EU Member States enjoy uneven levels of protection, or in six countries, no protection at all.

This means that despite the fact that whistleblowing is essential for protecting the public interest and for maintaining accountability and integrity in both the public and private sectors, whistle-blowers who speak up often do so at high personal risk, and usually suffer great professional and personal costs. The current Luxleaks trial is a case in point.

Legal elements of the proposal

EU legislation on whistleblowing protection may only be adopted if there is a legal basis for such action in the Treaties, so we propose a whistle-blower directive that is based on the protection of working conditions (based on Article 4(2)(b) in conjunction with Articles 151 and 153(2)(b) TFEU). We argue that Articles 151 and 153(2)(b) TFEU provide a clear and unambiguous basis for EU

legislative action to empower employees to report wrongdoing in a framework that provides legal certainty and a common minimum level of legal protection for workers throughout the Union.

- **Scope of the Directive:** The personal scope of the proposal extends to both current and former workers, including trainees and apprentices, in all sectors of activity, public or private.
- **Protected Disclosures:** Protected disclosures concern harms or threats to the public interest that have occurred, are occurring at the time of the disclosure, or are likely to occur. Protection is given also to whistle-blowers who disclose inaccurate information in honest error.
- **Reporting Channels:** Protected disclosures can be made alternatively or cumulatively in various ways, including internally within the workplace, or externally to the competent authorities, parliamentarians and oversight agencies, or trade unions and employers' associations, as well as to the public through the media, including social media or non-governmental organisations.
- **Whistle-blowing procedures:** Requirements are set for the independent and timely investigation of whistle-blower reports, for the protection of confidentiality throughout the procedure, for the protection of the identity of whistle-blowers who disclose information anonymously, and for the protection of the rights of the persons implicated by a disclosure.
- **Protection of whistle-blowers:** Protections include exemptions from criminal proceedings related to the protected disclosure, including but not limited to prosecution for the disclosure of classified information, trade secrets or otherwise confidential information, exemptions from civil proceedings and disciplinary measures, and prohibitions of other forms of reprisal, including inter alia dismissal, demotion, withholding of promotion, coercion, intimidation, etc. Action taken against individuals other than the person who made the protected disclosure (for example colleagues or family members) may also constitute prohibited reprisal.
- **Burden of proof:** The burden of proof to demonstrate that any measure taken against a whistle-blower is not related to a whistle-blower's disclosure is on the employer.
- **Reporting and sanctions:** The draft directive also includes a yearly reporting mechanism and the creation of an EU data base on whistleblowing. It also calls on the Member States to introduce sanctions in cases of breaches of the Directive, which could include the possibility to seek compensation.

Next steps

With this draft Directive we aim to gather broad cross-party support within the European Parliament so that this work can be used and built upon by the Commission, which is the only EU institution with the competence to start such a legislative initiative.