



**The Greens | European Free Alliance**  
in the European Parliament

# **WHISTLEBLOWER PROTECTION IN THE PUBLIC AND PRIVATE SECTORS IN THE EUROPEAN UNION**

## **PROPOSAL FOR A DIRECTIVE ESTABLISHING MINIMUM LEVELS OF PROTECTION FOR WHISTLEBLOWERS**

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### **Updated Version**

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### **Original Version**

The case for EU legislative action on whistleblowing

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Legal elements of the Proposal & Proposal

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## EXECUTIVE SUMMARY

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Europe has come a long way since the Greens/EFA Group first published, in May 2016, a draft EU Directive to establish minimum levels of protection across the European Union<sup>1</sup>. The objective was to demonstrate that EU legislation to protect whistleblowers was not only urgently necessary in the wake of scandals like Luxleaks and the Panama Papers, but also legally viable.

Growing calls for EU legislation on whistleblower protection from the European Parliament, trade unions, journalists, civil society and even European governments finally culminated in Commissioner Vera Jourová's announcement on 5<sup>th</sup> March 2018 that the Commission is working to finalise a horizontal legislative proposal for the protection of whistleblowers which they plan to present in April 2018<sup>2</sup>.

In this context, the Greens/EFA Group has produced an updated draft Directive on whistleblower protection, which takes into account the results of the public consultation held on the original draft between May and September 2016<sup>3</sup>. It also builds on a legal analysis commissioned to explore the different competences of the European Union to legislate on whistleblower protection<sup>4</sup> and further integrates key principles and international best practice standards that we would hope to see reflected in the European Commission's upcoming proposal, independent of which legal basis is ultimately chosen.

This document includes a checklist of whistleblower protection standards that should be covered in upcoming EU legislation if a wide and well-functioning protection of public interest disclosures is to come into effect. This is followed by a short description of the legal basis chosen by the Greens/EFA Group to protect whistleblowers in both the private and public sectors, a list of the main changes integrated in the new proposal for Directive, and finally, the updated text of the Directive to establish minimum levels of protection for whistleblowers across the European Union.

The challenge now is to ensure that the Commission's upcoming proposal is as wide and comprehensive as possible, and that it does not leave public interest whistleblowers exposed to retaliation or to unnecessary obstacles in seeking protection.

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<sup>1</sup> To see the original draft, visit: <https://www.greens-efa.eu/en/article/whistle-blowers-directive/>

<sup>2</sup> You can watch her announcement here, at minute 17:21:00 <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20180305-1500-COMMITTEE-LIBE>

<sup>3</sup> The results of the public consultation on the Greens/EFA draft directive can be found here: <https://www.greens-efa.eu/en/article/news/positive-feedback-on-greens-efa-draft-eu-directive-for-the-protection-of-whistleblowers/>

<sup>4</sup> Abazi, V. (2017) Legal Analysis on the Competences of the European Union for Legislation on Whistleblower Protection Commissioned by the Greens/EFA Group in the European Parliament. <http://extranet.greens-efa-service.eu/public/media/file/1/5179>

## **BEST PRACTICE STANDARDS FOR FUTURE LEGISLATION ON WHISTLEBLOWER PROTECTION**

With our original draft Directive proposal and this amended version, (see main changes below) we aim to provide a solid foundation on which the European Commission can build to strengthen its own efforts towards an EU Directive on the protection of whistleblowers, as it is the only EU institution with the competence to propose a legislative initiative.

Notwithstanding the choice of legal basis for a possible EU law on the protection of whistleblowers, the following best practice standards – all of which are included in this Draft Directive and in the Greens/EFA Principles on Whistleblower Protection<sup>5</sup> – should be included in the proposal by the Commission if an EU law is to be in line with international best practice norms and procedures.

- **Both public and private bodies should be obliged to protect whistleblowers:** Waste, misconduct and corruption affect all sectors, and freedom of expression and freedom of information must also be protected in all sectors. This is why this proposal for a Directive is based on the protection of working conditions and specifically covers both current and former workers, including job applicants, trainees and apprentices, in all sectors of activity, public or private. It also extends protection to most persons in a “working” relationship, for example, the self-employed (e.g. consultants, free-lancers), interns, lawyers, board members, volunteers and entrepreneurs, in line with the interpretation of worker by the European Court of Justice. See **Article 2 and Article 3**.
- **There should be a broad definition of protected disclosure so that whistleblowers can report on wrongdoing and reveal information that is in the public interest:** Alerts should not be limited to purely illegal activities but should also cover other forms of misconduct or wrongdoing. Threats to the public interest that have occurred, are occurring, or are likely to occur should also be covered. Exclusive lists should be avoided, and instead indicative lists covering a wide range of examples should be put forward: environmental protection, health and safety, public finance, violations of human rights, corruption and fraud, discrimination, conflicts of interest, public safety, the functioning of the internal market, etc. See **Article 2 (c), Article 4**.
- **Whistleblowers should be protected in all fields of EU competence:** Issue-specific legislation should be avoided. For example, proposing legislation to only protect whistleblowers that report mis-spending of EU funds leaves out mis-spending of national funds, and all the other areas (environmental, social, health-related) as well.

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<sup>5</sup> <https://efa.greens-efa.eu/en/article/news/principles-for-european-whistleblower-legislation/>

- **Whistleblowers should be free to report both internally and externally:** We believe that whistleblowers should be protected no matter what their choice of reporting channel is, as long as they reasonably believe that the disclosed information shows potential wrongdoing, a risk of harm or damage, or is information that is otherwise in the public interest. This applies whether or not the belief is correct or any perceived threat of harm actually materialises. In this Directive, we propose that it should be possible for whistleblowers to disclose information either alternatively or cumulatively, and in various ways - internally within the workplace, externally to the competent authorities, parliamentarians and oversight agencies, trade unions and employers' associations, and also to the public through the media or non-governmental organisations. See **Article 4, Articles 5-8.**
- **Whistleblowers' reports should be quickly and seriously investigated:** Investigations into the issues raised by whistleblowers should be conducted independently and within the shortest timeframe possible, protecting also the rights of individuals that might be implicated by a disclosure. The whistleblower should be able to provide additional arguments and evidence throughout the investigation, and should be kept informed of the handling of the disclosure. See **Article 12.**
- **Whistleblowers should not suffer due to their disclosures:** Whistleblowers should be able to report information anonymously or confidentially and have their identity kept secret. They should be exempted from criminal and civil proceedings related to the disclosure as well as from other disciplinary measures or forms of reprisal (including dismissal, demotion, withholding of promotion, etc). In cases not otherwise protected under this Directive, whistleblowers should have access to a public interest defence. See **Article 2(e), Article 3(2), Article 11, Articles 14-17 and Article 20.**
- **Whistleblowers should not bear the burden of proof:** Whistleblowers who disclose inaccurate information in honest error should still be protected, and they should not have to prove that they acted in good faith. The only thing that matters is whether the information they revealed was in the public interest or whether it revealed wrongdoing or other misconduct. The employer must be the one that demonstrates that any measures taken against a whistle-blower are completely unrelated to the information revealed. See **Article 13.**
- **There should be sanctions for harassing whistleblowers, or their family or colleagues:** Those who harass whistleblowers, their family or their close colleagues as a result of a disclosure, should be held liable. Actions taken against colleagues or family members as a result of the protected disclosure should be prohibited and sanctioned. See **Article 14(4), Article 18.**

- **Whistleblowers should be entitled to compensation and to legal and psychological support:** Whistleblowers should have access to independent legal advice on their case and to an attorney, and they should be given psychological support and/or treatment if needed. Whistleblowers should also be able to claim compensation for any harassment suffered or for the loss of current or future livelihoods, if the damage occurred in retaliation for a protected disclosure. See **Article 9, Article 10** and **Article 21**.
- **Protected disclosures override secrecy regimes:** Regimes of trade secrets, official secrets and other classified information should not override protected disclosures. See **Article 22** and **Article 23**.
- **Independent Advice and Monitoring:** We also recommend the establishment of an independent body that monitors, provides advice and that shares reports on the application of the whistleblower protection Directive with relevant European Union institutions and bodies. See **Article 6(3)** and **Article 24**.

## SUMMARY OF MAIN CHANGES FOLLOWING THE PUBLIC CONSULTATION

- Provisions are grouped into Chapters for easier comprehension.
- The distinction and protection for both confidential and anonymous disclosures is clarified and the duty to maintain confidentiality is strengthened to ensure that:
  - a) those who disclose information anonymously can avail themselves of legal protection once their identity is known or is guessed.
  - b) consent to disclose the identity of a whistleblower is positively sought and granted;
  - c) where consent is not granted, a whistleblower's identity may only be disclosed by a court order granting permission for disclosure.
- Protected disclosure refers also to any "responsible person or party" (i.e. who would be legally or otherwise accountable for the information and/or for any harm or damage that the information revealed or could have prevented)
- The extra-territoriality of any information disclosed is not a bar to protection.
- Information subject to duties of confidentiality or secrecy can qualify for protection and in particular the EU Directive on Trades Secrets does not override the protection of whistleblowing in the public interest.
- The duties and responsibilities for those receiving, assessing, and investigating disclosures - including regulatory and competent authorities - are strengthened. They must follow clear procedures to protect whistleblowers and to handle and act on the information properly, paying close regard to their duties of confidentiality and fairness.

- Provides possibilities for sanctions on organisations and competent authorities who fail to fulfil their duties and responsibilities to protect whistleblowers or who fail to act on the substance of a protected disclosure.
- Inserts a requirement for access to legally protected and independent, confidential advice for whistleblowers to ensure they can a) make an informed choice on how to raise a concern to ensure it is addressed b) understand their legal position c) seek representation should they suffer unfairly for having made a disclosure.
- Inserts more specific protection for public interest disclosures with respect to official secrets, national security, military secrets or other classified information and a framework to ensure genuinely classified information can be handled sensitively and appropriately.
- Adds a reference to the need to include a public interest defence for all disclosures not otherwise covered by the Directive.

## **THE GREENS/EFA CHOICE OF LEGAL BASIS: PROTECTION OF WORKING CONDITIONS**

There is a legal basis in EU primary law to provide the widest personal scope and highest level of protection for whistleblowers. Namely, Art 4(2)(b) in conjunction with Art 151 and 153(2)(b) TFEU support such protection, as evident from an in-depth legal analysis.

At the same time, we urge the European Commission to ensure that the legal basis finally chosen is the one that ensures the widest and strongest protections and that reflects the transversal and cross-sectoral impact of whistleblowers' revelations on the public interest. Limiting whistleblower protection to a narrow sector or to a small number of people would defeat the whole purpose of EU-wide protection. According to our analysis, Articles 151 and 153(2)(b) TFEU provide a clear and unambiguous basis for EU legislative action to empower employees from all sectors to report wrongdoing in a framework that provides legal certainty and a common minimum level of legal protection throughout the Union.

This legal basis is also based on the recognition that while the consequences of whistleblowing may be multifaceted, they almost always start within the context of the working relationship. It is also worth highlighting that whistleblowing is a manifestation of freedom of expression, but that, given the EU's lack of competence in this area, we could not use this as a basis for the current Directive, which is not intended to limit in any way the fundamental right to freedom of expression as provided for in the Charter of Fundamental Rights as well as in the European Convention on Human Rights.

# **GREENS/EFA PROPOSAL FOR A DIRECTIVE ON WHISTLEBLOWER PROTECTION**

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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

Establishing minimum levels of protection for whistleblowers

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 4(2)(b) in conjunction with Articles 151 and 153(2)(b) thereof,

[Having regard to the proposal from the Commission]

Whereas:

1. Whistleblowers play an essential role in exposing corruption, fraud, mismanagement and other wrongdoing that threatens public health and safety, finances and financial integrity, human rights, the environment, and the rule of law.
2. Whistleblowers who report or expose misconduct, wrongdoing, fraud or illegal activity often do so at a high personal and professional risk of being dismissed, sued, boycotted, arrested, threatened or victimised and otherwise discriminated against in a variety of other ways, despite the clear value of their actions in contributing to a vibrant democracy and protecting the public interest.
3. The right of citizens to report wrongdoing and reveal information that is in the public interest is a practical manifestation of the right of freedom of expression as enshrined in Article 11 of the Charter of Fundamental Rights, and it is essential to ensure the principles of transparency, integrity and accountability.
4. Since 2013, the Parliament has consistently and continuously called on the Commission to consider and propose legislation on whistleblower protection. In a Resolution of 23 October 2013 on ‘Organised crime, corruption and money laundering: recommendations on action and initiatives to be taken’, the European Parliament particularly called for the Commission, by the end of 2013, to submit a legislative proposal establishing an effective and comprehensive European whistleblower protection programme in the public and in the private sector to protect those who detect inefficient management and irregularities and report cases of national and cross-border corruption relating to EU financial interests and to protect witnesses, informers,

and those who cooperate with the courts, and in particular witnesses testifying against mafia-type and other criminal organisations, with a view to resolving the difficult conditions under which they have to live (ranging from risks of retaliation to the breakdown of family ties or from being uprooted from their home territory to social and professional exclusion). In this Resolution, the European Parliament calls also on the Member States to put in place appropriate and effective protection for whistleblowers.<sup>6</sup>

5. In a Resolution of 12 March 2014 on the “US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs” the European Parliament called on the Commission to examine the possibility for a legislative proposal establishing an effective and comprehensive European whistleblower protection. The Parliament called for protection of disclosure of wrongdoing, including corruption, criminal offences, breaches of legal obligation, miscarriages of justice and abuse of authority, in line with the provisions of different international (UN and Council of Europe) instruments against corruption, the principles laid out in the PACE Resolution 1729 (2010), and the Global Principles on National Security and the Right to Information (the “Tshwane Principles”) 2013;<sup>7</sup>
6. In a Resolution of 25 November 2015 on ‘Tax Rulings and other measures similar in nature or effect’, the European Parliament called on the European Commission to propose EU legislation to protect whistleblowers by June 2016 and condemned the fact that citizens and journalists can be subject to legal prosecution rather than legal protection when, acting in the public interest, they disclose information or report suspected misconduct, wrongdoing, fraud or illegal activity.
7. In a Resolution of 16 December 2015 aimed at bringing transparency, coordination and convergence to corporate tax policies in the Union, the European Parliament called on the European Commission to bring forward a legislative proposal offering Union-wide protection for whistleblowers who report suspected misconduct, wrongdoing, fraud or illegal activity to national or European authorities or, in cases of persistently unaddressed misconduct, wrongdoing, fraud or illegal activity that could affect the public interest, to the public as a whole. It recognised that since whistleblowers helped to mobilise public attention on the issue of unfair taxation, Member States should consider measures that will protect such activity since otherwise those workers who hold vital information will understandably be reluctant to come forward and therefore that information will not be made available.

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<sup>6</sup> Point 14, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0444&language=EN&ring=A7-2013-0307>

<sup>7</sup> Point 89, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0230+0+DOC+XML+V0//EN>



8. In a Resolution of 14 February 2017, the European Parliament focused on the role of whistleblowers in the protection of EU's financial interests (2016/2055(INI)). The Resolution emphasised that whistleblowing relating to the financial interests of the Union should include but not be limited to corruption, fraud, conflicts of interest, tax evasion and tax avoidance, money laundering, infiltration by organised crime and acts to cover up any of these. The European Parliament called for the establishment of an independent information-gathering, advisory and referral EU body, with offices in Member States which are in a position to receive reports of irregularities, as well as the creation of a special unit with a reporting line in the European Parliament. It also requested that the European Court of Auditors report annually on the role of whistleblowers in protecting the financial interests of the Union.
9. In a Resolution of 24 October 2017, the European Parliament called on the European Commission to implement rules by the end of 2017 to strengthen the protection of whistleblowers in order to address the gaps and inadequacies in the current levels of protection in EU member states (2016/2224(INI)). The report highlighted the importance of anonymous reporting and emphasised the need to ensure that whistleblowers are still protected if they report directly to the public or the press. The European Parliament reiterated the importance of the role of whistleblowers in revealing serious breaches of the public interest, such as corruption, miscarriages of justice, tax avoidance, lack of protection for food safety or the environment and attacks on social, human or workers' rights and also called for the provision of legal and financial aid, psychological support and compensation for damages suffered by whistleblowers as a result of their disclosures.
10. In addition to Resolutions, some EU Regulations also indirectly address protection for whistleblowers. It has been specifically recognised that 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<sup>8</sup> could act a basis for legislation on whistleblowing. The Market Abuse Regulation highlights the fact that whistleblowers may bring new information to the attention of competent authorities which assists them in detecting and imposing sanctions in cases of insider dealing and market manipulation. Furthermore, this Regulation notes that Member States should be allowed to provide for financial incentives for those persons who offer relevant information about potential infringements.

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<sup>8</sup> OJ L 173, 12.6.2014, p. 1

11. Currently, significant variation exists between the ways in which different Member States provide, or fail to provide, protection for whistleblowers and as a result, workers both in the public and private sector who hold vital information, which can also be of relevance in another Member State, are understandably reluctant to come forward, meaning that important information is not being made available.
12. This Directive takes into consideration the Council of Europe's "Recommendation CM/Rec(2014)7 on the protection of whistleblowers" and notably the definition of whistleblower "as any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector".
13. This Directive takes into consideration the Directive 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 which includes an exception for whistleblowers disclosing trade secrets in the public interest.
14. This Directive is to apply without prejudice to the Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) which requires Member States to protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.
15. This Directive does not prejudice any protection pertaining to freedom of expression, media freedoms and other protected disclosure regimes nor does it limit the right of individuals to report to competent authorities.
16. This Directive does not justify any reduction in levels of protection already achieved in individual Member States. Member States may introduce stronger protection insofar as the national legislation is compatible with EU law.
17. When implementing the measures transposing this Directive, Member States must respect the fundamental rights and observe the principles recognised in particular by the European Charter of Fundamental Rights.

HAVE ADOPTED THIS DIRECTIVE:

**Chapter I**  
**GENERAL PROVISIONS**

Article 1

**Purpose**

1. The objective of this Directive is to introduce minimum standards for the legal protection of whistleblowers as defined in this Directive.
2. Member States may introduce or maintain more favourable provisions for the protection of whistleblowers than those provided in this Directive.
3. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection of whistleblowers nor to the right to freedom of expression already afforded by Member States in the fields covered by this Directive.

Article 2

**Definitions**

For the purposes of this Directive, the following definitions shall apply:

- a) 'whistleblower' means any worker who discloses, attempts to disclose, or is perceived to have disclosed information, or to have provided supporting evidence, about suspected or actual wrongdoing, a risk of harm, or other information in the public interest in accordance with this Directive;
- b) 'worker' means any person employed, contracted or otherwise engaged in any activity related to the work of an employer, including but not limited to job applicants, trainees, apprentices, contractors, former employees, volunteers or as otherwise stipulated in EU law;
- c) 'protected disclosure' means any information as provided in this Directive and is disclosed by any means at the disposal of a worker in accordance with this Directive;
- d) 'employer' means any natural or legal person who employs, contracts or otherwise engages individuals to perform remunerated or unremunerated work-related tasks or who is responsible for the undertaking and/or establishment which does so;
- e) 'reprisal' means any adverse treatment or adverse consequence, whether resulting from an action or threatened action, or the concealment of an act, or an omission or failure to act, that is to the detriment of the worker, including but not limited to:

- suspensions, demotions, lay-offs, transfers or dismissals;
- withholding of promotions, training or other career development opportunities;
- loss of benefits or status;
- transfer of duties, tasks, change of location of the workplace or of working hours;
- any disciplinary measure, reprimand or other penalty (including a financial penalty or suspension or revocation of a security clearance);
- coercion, intimidation, harassment, or discrimination
- specific litigation arising as a result of the protected disclosure.

### Article 3

#### **Personal Scope**

1. This Directive shall apply to all workers in all sectors, public and private.
2. Member States shall protect workers from any unfair treatment or reprisals and provide civil and criminal immunities in accordance with this Directive.

### Article 4

#### **Protected Disclosure**

1. Protection shall be granted for the disclosure of information, which in the reasonable belief of the worker making the disclosure shows potential wrongdoing, a risk of harm or damage, or is information that is otherwise in the public interest, whether or not the belief is correct or any perceived threat of harm materialises.
2. Protected disclosure tends to show but is not limited to the following:
  - a) a criminal offence that has been, is being or is likely to be committed;
  - b) a natural or legal person has failed, is failing or is likely to fail to comply with a legal or other regulatory obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
  - c) a miscarriage of justice or a violation of human rights has occurred, is occurring or is likely to occur;
  - d) the health or safety of any individual has been, is being or is likely to be endangered;

- e) the environment, public health, public safety or the rights of consumers is being or is likely to be endangered or negatively affected or damaged;
  - f) a detriment to public finances, or an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
  - g) an act or omission by or on behalf of a public body is oppressive, discriminatory, or grossly negligent, or constitutes gross mismanagement;
  - h) information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed;
  - i) information that provokes or contributes to discussions of public interest or informs public debate on matters of public interest.
3. A disclosure shall be made by any means at the disposal of the worker including but not limited to verbally, in writing, digitally or via a legal or trade union or professional representative.
4. For the purposes of subsection (2) it is immaterial whether the disclosure relates to a relevant wrongdoing or harm that occurred, is occurring or would occur in the same territory or country in which the whistleblower resides, or is working.

## **Chapter II**

### **PROTECTED DISCLOSURE CHANNELS, INSTITUTIONAL ARRANGEMENTS AND PROCEDURES**

#### Article 5

##### **Disclosures to Employers or Other Responsible Persons**

1. Member States shall ensure that recipients of disclosed information within the workplace shall include, but not be limited to:
- a) Line-managers, superiors or representatives of the organisation;
  - b) Human resources, ethics officers, work councils or other bodies in charge of mediating conflicts at work, including conflicts of interest;
  - c) Internal financial oversight bodies within the organisation;
  - d) Disciplinary bodies within the organisation.

2. Member States shall ensure the protection of workers who disclose the information directly to an employer other than his or her direct employer where there are multiple organisations or employers involved and the worker reasonably believes the information relates solely or mainly to the conduct of that person or organisation, or is a matter for which that person or organisation has legal responsibility. Any such disclosure shall be treated in the same way as a disclosure to an employer.

## Article 6

### **Disclosures to Regulators and Authorities**

1. Member States shall grant protection to whistleblowers if they disclose or report information to a regulatory body or other competent authority.
2. Regulators and other authorities shall include, but not be limited to, the following:
  - a) Competent agencies;
  - b) Law enforcement, including investigative authorities, such as police and prosecution authorities;
  - c) Oversight agencies including for example inspection bodies and state auditors;
  - d) Elected officials including Members of Parliament, parliamentary committees; or
  - e) Any other specialised agencies or commissions, such as ombudspersons, data protection authorities or any other body established to receive complaints.
3. Member States may consider the establishment of an independent whistleblower protection authority.

## Article 7

### **Disclosure to Other Parties**

Member States shall provide protection to whistleblowers when the information covered in this Directive is disclosed to parties other than to the employer, other responsible person, or a competent or relevant authority, including but not limited to the following:

- a) Non-governmental organisations;
- b) Media, including social media;
- c) Trade unions, professional associations or bodies and any other officially recognised worker representative bodies.

## Article 8

### **Disclosure channels**

A whistleblower may use the disclosure channels as provided in Articles 5, 6 and 7 of this Directive in a cumulative or alternative manner, without legal constraints or legal obligations for initial disclosure.

## Article 9

### **Independent Advice**

Member States shall ensure that whistleblowers:

- a) have access to independent and confidential advice, including legal advice from a lawyer, trade union representative or other relevant person or body.
- b) are legally protected for seeking such advice.

## Article 10

### **Institutional Arrangements and Procedures**

1. Member States shall provide for, set up or enhance institutional arrangements and disclosure mechanisms, including employer-based procedures to:
  - a) facilitate the disclosure of information in the public interest;
  - b) provide clear, strong and appropriate measures to protect whistleblowers, including the provision of legal, psychological and other relevant support where necessary; and
  - c) ensure action is taken on relevant information disclosed, including but not limited to the appropriate analysis of information received, the investigation of any material issues, and corrective or preventive action in relation to these.
2. Member States shall ensure that whistleblower regulations, mechanisms and procedures are available, accessible, visible and well understood by workers.
3. Member States may, to the extent that employment relations are regulated by collective labour agreements, provide that employer-based procedures can be negotiated in the framework of such agreements.

## Article 11

### **Confidentiality and Anonymity**

1. Disclosure mechanisms, including digital mechanisms, and institutional arrangements shall provide for safe, secure, confidential and anonymous disclosures.
2. Any person who learns of the identity of a whistleblower or any information that might identify a whistleblower who intends to make or who has made a protected disclosure anonymously, shall not disclose their identity or any information that might identify them to any other person without the consent of the whistleblower.
3. The obligation of confidentiality in paragraph (2) is guaranteed unless consent to disclose is sought and granted, or is ordered by a court.
4. Member States shall ensure that relevant regulatory and other competent authorities with the power to investigate disclosures have clear procedures for handling all disclosed information securely with due regard to confidentiality, including the basis on which such information can or shall be shared.

## Article 12

### **Requirements on Employers and Regulatory Bodies**

Member States shall provide for the independent, timely and thorough investigations of whistleblower reports, including the following minimum criteria:

- a) A duty on employers or other responsible persons, and regulatory or other competent bodies, to take preventive or corrective action in cases where a protected disclosure reveals that a risk or harm has occurred, is occurring or is likely to occur, in particular if the matter is serious or significant harm or damage has or may occur.
- b) The employer or competent authority shall be required to acknowledge receipt of a protected disclosure in writing to the whistleblower within five working days.
- c) The whistleblower shall be informed within 30 working days from receipt of the disclosure about the assessment of the information provided and whether any further action, including referring the matter to a body that is authorised and competent to investigate it, is envisaged, as well as information about investigation findings, or about any other action taken by the employer or competent authority.
- d) If the employer or competent authority does not provide this information within the legally specified times, it shall be required to inform the whistleblower in writing about the reasons for



its failure to do so and about any further or corrective action taken or contemplated.

- e) The whistleblower has the right to comment on the response of the employer or competent authority, request a review of the initial findings based on the original disclosure and any additional information that the whistleblower can provide, and for these comments and information to form part of the official record of the disclosure held by the employer or competent authority with due regard to the rights and protections set out in this Directive.
- f) This article is without prejudice to the whistleblowers' right to use other channels of disclosure as provided in the Directive.
- g) Subsections b) through e) do not apply where the recipient has no means of communicating with the source.

### **Chapter III**

## **PROTECTIONS, RIGHTS AND REMEDIES**

### Article 13

#### **Burden of Proof**

Member States shall require the employer or other responsible person to demonstrate by clear evidence any claims or statements that a whistleblower's disclosure is purposefully dishonest, or is without any public interest value, and that any measures taken against a whistleblower are not in any way related to the disclosure.

### Article 14

#### **Protection from dismissal, administrative and disciplinary measures**

1. Member States must ensure that no employer or other responsible person, or regulatory body or other competent authority, is able to rely on a person's legal or contractual obligations in order to prevent that person from making a public interest disclosure or to penalise him or her for having done so.
2. Member States shall establish and implement the prohibition and sanctioning of any administrative or other disciplinary measure taken against any person if the reason or one of the reasons is that they made a protected disclosure.
3. Member States shall ensure that prohibited forms of reprisal include any act, threat or concealment of an act, or omission as defined in this Directive.

4. Member States may ensure that any action taken against any individual in relation to the making of a protected disclosure, whether the disclosure is made by that person or someone else, could constitute prohibited reprisal.

#### Article 15

##### **Immunity from Civil Liability**

Member States shall ensure that no cause of action in civil proceedings, including but not limited to attempts to claim for damages, defamation proceedings, claims with respect to property rights, including intellectual property, data protection or any other related civil matter, shall lie against a person in respect of making a protected disclosure, including for the disclosure of classified information, trade secrets or other confidential information or official secrets.

#### Article 16

##### **Immunity from Criminal Prosecution**

Member States shall ensure that no person shall be subject to criminal proceedings related to the making of a protected disclosure, including but not limited to prosecution for the disclosure of classified information, trade secrets or other confidential information or official secrets.

#### Article 17

##### **Public Interest Defence**

Member States may ensure that when a whistleblower is subject to criminal or civil proceedings, or administrative sanctions, relating to their having made a disclosure of information not otherwise protected under this Directive, the law provides a public interest defence if the public interest in disclosure of the information in question outweighs the public interest in non-disclosure.

#### Article 18

##### **Rights of Persons Implicated**

Member States shall ensure that any findings or reports resulting from an assessment or an investigation of, or prompted by, one or more protected disclosure(s) does not unjustly prejudice any individual, whether directly or indirectly. The right to a fair hearing or trial shall also be fully respected.

## Article 19

### **No Waiver of Rights and Remedies**

1. The rights and remedies provided for under this Directive may not be waived or limited by any agreement, policy, form or condition of employment, including by any pre-dispute arbitration agreement.
2. Any attempt to waive or limit these rights and remedies shall be considered void and unenforceable and may be subject to penalty or sanction.

## Article 20

### **Secure and Protected Procedures and Disclosure Mechanisms**

1. Member States shall ensure confidentiality throughout any disclosure procedure, including with respect to digital security, and shall ensure that a person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred to in the performance of that person's duties, does not disclose to another person or make more widely available any information that might identify the person or persons making a protected disclosure.
2. The obligation of confidentiality in paragraph (1) is guaranteed unless consent to disclose is sought and granted, or is ordered by court.
3. Member States shall ensure that the relevant regulatory and other competent authorities with the prerogatives to investigate disclosures have clear procedures for handling all disclosed information securely with due regard to confidentiality, including the basis on which such information can or shall be shared.

## Article 21

### **Remedies and Sanctions**

1. Member States may provide that any failure by a relevant regulatory body or other competent authority is actionable by the whistleblower in case of any loss or damage caused by such a failure.
2. Member States may provide that any relevant regulatory body or other competent authority, including any independent oversight body with powers to inspect or enforce regulations, has the authority to enjoin an employer from taking or continuing any retaliatory measures against any person who makes a protected disclosure according to the Directive;

3. Member States may provide that bodies referred to in paragraph (2) have the authority to require anyone within their regulatory or legal remit, including an employer or any other responsible person, to take remedial or restorative measures for any reprisal or prohibited action taken against a whistleblower, including but not limited to reinstatement; reassignment; and/or the payment of fees.
4. Member States may provide that bodies referred to in paragraph (2) have the authority and powers to take regulatory action and impose sanctions on any employer, organisation or other responsible person who:
  - a) is found to have taken retaliatory or unfair action against a whistleblower;
  - b) has failed to address substantive issues of concern raised in a fair and timely manner;
  - c) has failed to follow established procedures for reporting concerns, including maintaining confidentiality, handling information properly, and ensuring no adverse or unfair treatment is caused to those avail themselves of these procedures.
5. Member States may provide that individuals may appeal to a judicial authority any determination by any of the bodies referred to in paragraph 2 that there was no retaliation with respect to a protected disclosure and any failure to take or require that remedial or restorative measures be taken.
6. Member States may provide that where no relevant competent authority or body has the power to require an employer or other responsible person to take remedial or restorative measures for any reprisal or prohibited action taken against a whistleblower, a whistleblower can make a claim to a judicial authority for a full and appropriate remedy including compensatory damages.
7. Member States may provide that a cause of action exists for anyone who suffers a detriment, harm or damage, and sanctions may apply as a result of any failure to act on material public interest information or to respond to a whistleblower in a timely and appropriate manner.
8. Member States may provide that a failure to comply with confidentiality and anonymity requirements is actionable.

## **Chapter IV**

### **NON-DISCLOSURE REGIMES**

#### Article 22

##### **Professional secrecy, trade secrets and other information subject to confidentiality**

Member States shall ensure that protected disclosures in accordance with this Directive include professional secrecy and other information subject to confidentiality as well as information defined as trade secrets or confidential business information by the Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

#### Article 23

##### **Official Secrets and Other Classified Information**

1. Member States may ensure that protected disclosures in accordance with this Directive include information defined as official secrets, including classified and sensitive information.
2. Member States may ensure that disclosures relating to matters of national security, official or military secrets, could be made to an autonomous oversight body that is institutionally and operationally independent from the security sector and other authorities from which disclosures may be made, including the executive branch, and which has the appropriate security clearance and the necessary investigatory powers to ensure access, including subpoena powers and the power to require that testimony is given under oath or affirmation.
3. Public personnel may be authorised to make protected disclosures to any independent oversight body that is established or to any other body competent to investigate the matter without first having to make the disclosure internally.
4. Member States shall ensure that protection is granted to whistleblowers informing the public only after they have notified the competent authority as defined above.
5. Member States may ensure protection from retaliation, including for public disclosures of information concerning wrongdoing, if:
  - a) the whistleblower made a disclosure of the same or substantially similar information internally and/or to an independent oversight body or other competent body; and the body to which the disclosure was made refused or failed to investigate the disclosure effectively; or the whistleblower did not receive a reasonable and appropriate outcome within a reasonable and legally-defined period of time as set in this Directive;

- b) the whistleblower reasonably believed that there was a significant risk in making the disclosure internally and/or to an independent oversight body or competent authority including that this would result in the destruction or concealment of evidence, interference with a witness, or retaliation against the person or a third party;
- c) there was no established internal body, independent oversight or competent body to which a disclosure could have been made;
- d) the disclosure related to an act or omission that constituted a serious and imminent risk of danger to the life, health, and safety of persons, or to the environment, or to the person making the disclosure.

## **Chapter V**

### **MONITORING AND EVALUATION**

#### Article 24

#### **Reporting Requirements**

1. Member States may require that employers and relevant competent authorities submit to their centralised and independent authorities information on:
  - a) the number of reports lodged by whistleblowers;
  - b) the measures taken to protect whistleblowers;
  - c) follow-up action taken in response to the content of protected disclosures;
  - d) any other information in relation to the effectiveness of the handling of the reports.
2. The competent national authorities may provide this information to the relevant institutions and bodies of the European Union, especially the European Parliament and the Commission on a yearly basis and in a timely manner.
3. The European Union institutions will establish a central database to gather and make publicly available in an easily accessible, electronic manner, the information received by Member States.

**Chapter VII**  
**FINAL PROVISIONS**

Article 25

**Sanctions and Remedies**

1. Member States may foresee sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and take all necessary measures to ensure the applicability of those sanctions.
2. The foreseen sanctions shall be effective, proportionate and dissuasive and may comprise of the payment of compensation to the whistleblower.
3. Member States that provide for sanctions in their national rules shall notify the Commission of those provisions by DATE [12 months after the date of adoption of this Directive] at the latest and notify without delay of any subsequent amendment affecting them.

Article 25

**Report**

1. By [DATE] the Commission shall carry out an evaluation of the effects of this Directive and submit a report to the European Parliament and the Council.

Article 27

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by DATE [12 months after the date of adoption of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
2. When Member States adopt those provisions; they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 28

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.