

COM(2018)218 of 23.04.2018: Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law – Whistleblowing.

Amendments to art. 2

<p>Personal scope</p> <p>1. This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work - related context including, at least, the following:</p> <p>a) persons having the status of worker, with the meaning of Article 45 TFEU;</p> <p>b) persons having the status of self-employed, with the meaning of Article 49 TFEU;</p>	<p>b) persons having the status of self-employed, with the meaning of Article 49 TFEU; as well as on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices.</p>	<p>Comments:</p> <p>The employment status should not prevent workers from blowing the whistle. This is why we propose to broaden the personal scope of the directive to cover new types of employment. The text proposed here is the text that the European Parliament is proposing in the case of the directive on transparent and predictable working conditions.</p>
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Amendment on Article 4(1).

<p>1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with social partners, if appropriate.</p>	<p>1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultations with workers and the employee representative and/or their trade unions. Such procedures can also be negotiated in the framework of collective bargaining agreements.</p>	<p>Comments:</p> <p>The proposed directive states that the social partners have an essential and multifaceted role to play in the implementation of whistleblower protection rules. Among other things, the social partners will contribute to the promotion of whistleblowing as a mechanism of good governance. The directive also states that workers and their trade unions must be fully consulted on envisaged internal procedures for whistleblowers, and that such</p>
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		<p>procedures can be negotiated within the framework of collective bargaining agreements. This central role should be explicitly stated in Article 4, which should include that the employee representative and/or trade union of a reporting employee must be consulted in connection with the establishment and implementation of an effective internal reporting channel and follow-up procedure on reports. Furthermore, Article 5 should explicitly state that internal reporting procedures and follow-up can be agreed within the framework of collective bargaining.</p>
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Amendments to art. 4(2), 5(1)(a) and 6(2)(c).

<p>Article 4 2. Such channels and procedures shall allow for reporting by employees of the entity. They may allow for reporting by other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2 (1) (b), (c) and (d), but the use of internal channels for reporting shall not be the mandatory for these categories of persons.</p>	<p>Amendment to Art. 4(2)(a) – new: Such channels must guarantee the whistleblower anonymity when he / she wants it, as well as his / her personal information.</p>	<p>Comments: If the directive is to achieve its intended effect and ensure a high degree of legal protection of whistleblowers, it is crucial that the reporting person be given the opportunity to remain anonymous. Therefore, it must be explicitly clarified in Article 4 (2), 5(1) and 6 (2) of the proposed directive that reporting can be anonymous, and we therefore support the EMPL in the amendments 8 and 10.</p>
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<p>Article 5(1)(a): Channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised staff members.</p>	<p>Amendment to art. 5(1)(a) - new: Such channels must guarantee the whistleblower anonymity when he / she wants it, as well as his / her personal information.</p>
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<p>Article 6(2)(c): () transmit the information contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.</p>	<p>Amendment on art. 6(2)(c)(a) - new: Such channels must guarantee the whistleblower anonymity when he / she wants it, as well as his / her personal information.</p>
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Amendment on Article 15(5).

<p>Article 15. 5. In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her proving reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report but was exclusively based on duly justified grounds.</p>	<p>Amendment on Article 15: 5. In judicial proceedings relating to a detriment suffered by the reporting person, the burden of proof will be reversed so that, in prima facie cases of retaliation, the person or organisation must prove that it is not retaliation against the whistleblower because of the act of whistleblowing.</p>	<p>Comments: In the proposal for the directive – 5. Other elements, chapter IV (Articles 13-18) - it is stated, that Article 15 requires that retaliation in any form be prohibited and sets out further measures that Member States should take to ensure, the protection of reporting persons, including providing for the reversal of the burden of proof in legal proceedings. In its press release on the 23 April 2018, the Commission stated that all forms of</p>
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